NO. 107

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

RONALD ELIOT GAY, PETITIONER & WYLMA GAY COOLEY, PETITIONER

VERSUS

JANET HUNT, ET. AL., RESPONDENTS

ON THE PETITION FOR WRIT OF CERTIORARI TO THE HONORABLE RHODE ISLAND SUPREME COURT

A JOINT APPRENDIX SUPPORTING THEIR PETITIONS FOR A WRIT OF CERTIORARI

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DATED: JULY 16, 2008

Noted Appendix Typing Errors (October 10, 2008):

Page 1: B. 3. Should read, Order (Award of Counsel Fees Denied): By Court, June 11, 2008.
Page 3: (f2) should be (2), and (2) should be (3).
Page 6: m{a}y should be may.
Page 20: 93,856.54 to John S. Oar should be $93,856.54 to John S. Pfarr.
Page 32: 15-7-169(a) should be 15-7-16(a).
Page 60: poof should be proof.
Page 83: Bigious should be Bigos.
Page 99: Section B, codicil should be codicils.
Page 102: Second bold sentence has spacing error.
Page 104: 2nd paragraph has spacing error.
Page 107: Several spacing errors.
Page 124: In FOURTH; situate should be situated, locate should be located, day should be say, possessing should be possession.
Page 126: may children should be my children.
Page 128: form should be from.
Page 129: ... from giving surety thereon "to" any court either in the "state" ...
Page 130: ... legacy, bequest, or "devise" ...
Page 131: ... Moneys or "be" responsible for ...
Page 137: ... the same shall be proper ")", ... as the Trustee in "its".
Page 138: ... absolutely and "in" fee simple, ... after the time of division, shall "pay" over the net income "from" one of said ...
Page 142: ... all stock dividends. " " "
Page 148: ... permit any "shares" of the Hadley "C"ompany
Page 151: ... or deed of trusts until "the" decease ...

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC
Filed March 9, 2005
SUPERIOR COURT

FLEET NATIONAL BANK,	:	
	:	
VS	:	**M. P. No:. 02-6899**
	:	
JANET, LUCILLE FOSTER, MARCIA HANRAHAN, AS EXECUTREX OF THE ESTATE OF SARAH HADLEY AND INDIVIDUALLY, CYNTHIA GAY, ET AL	:	

DECISION

RUBINE, J. Before this Court is a Petition filed by Fleet National Bank ("Fleet),[1] seeking instruction as to the proper construction and distribution of two trusts established by decedent Art Hadley (Art Hadley's Living Trust and Art Hadley's Testamentary Trust) and one trust established by decedent Frances E. Hadley (Frances Hadley's Testamentary Trust) (collectively the "Hadley Trusts"). Fleet serves as the Trustee of each of the Trusts, and has filed a Second Amended Petition asking for an order of this Court in aid of the construction of these trusts, and for a determination of the proper distribution of the

[1] The Court takes judicial notice that Fleet has recently been acquired by the Bank of America, Accordingly, Bank of America is presumably the real party in interest at this time. This action however, may be continued by the original party in the absence of a motion to substitute. See Super. R. Civ. P. 25(c).

assets thereof. Several interested parties, discussed below in greater detail, have asserted conflicting claims to the Hadley Trusts.

The jurisdiction of the Court to resolve these conflicts relative to the construction of these trusts is pursuant to G.L. 1956 Chapter 30 of title 9, the Uniform Declaratory Judgments Act. Section 9-30-4 provides as follows:

> Any person interested as or through an executor, administrator, trustee, guardian, or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, person who is mentally incompetent or insolvent, may have a declaration of rights or legal relations in respect thereto:
>
> (1) To ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others;
>
> (f2) To direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity' or
>
> (2) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

Facts and Travel

The Parties and their Interests

In connection with the Second Amended Petition, the parties have filed with the Court an Agreed Statement of Facts, and a document entitled "Relevant Court Record,"

which includes the Second Amended Verified Petition, and the exhibits incorporated by reference therein. By letter to the Court dated June 10, 2004 from counsel to for all interested parties, it was represented to the Court that the parties were in agreement that the Statement of Facts and the Relevant Court Record were all that was necessary for submission of this case to the Court for decision. Each of the interested parties has filed supporting legal memoranda. None of the parties has requested an evidentiary hearing. Accordingly, the Court will render its decision based upon the parties' agreement as to the material facts. Following is a summary of such facts as gleaned from the agreed submissions.

Art Hadley died on May 27, 1941, survived by his wife, Frances Hadley, and his two children, Thomas P. Hadley and Sarah Louise Hadley. Thomas Hadley married Betty Hadley on March 8, 1962. At the time of their marriage, Betty Hadley had two children from a previous marriage, Janet Hunt and Lucille Foster. Frances Hadley died on August 25, 1968. Fourteen years after his marriage to Betty Hadley, Thomas Hadley adopted both Janet Hunt and Lucille Foster on March 11, 1976 at which time both children had reached the age of majority. In 1993, Thomas Hadley died, having had no natural born children but survived by Betty Hadley, Janet Hunt, and Lucille Foster, all of whom are still living. Sarah Hadley died childless, having never married, on January 3, 2002. Sarah Hadley's death triggered the distribution of the three Hadley Trusts presently in dispute.

The parties who have asserted an interest in the Hadley Trust, and their relationship to the Hadley's, are the following: (1) Janet Hunt and Lucille Foster are the adopted children of Thomas Hadley; (2) Marcia Hanrahan is the executrix and a potential beneficiary of Sarah Hadley's estate; (3) Cynthia Gay is a potential beneficiary of Sarah Hadley's estate; (4) Allyson Gay, Wendy Gay, Robert Seeley, Diana Robertson, Suzanne Beyer, Cynthia Gay, Sheila Gay Franklin, Reverend Ronald Gay, Wylma

Cooley are potential beneficiaries of Art Hadley's estate; (5) Stephen R. Lucas, Donald Lucas, Jeffrey C Lucas, Fay C. Drummond, Raymond J. Harrison, R. Carol Justice, Clair Perry, Elizabeth Perry Robinson, Brigette Young, Sigrid Perry Reddon, Sharon Perry Glover, Eugene E. Perry II, Jane Cranston, and S. Bruce Allsop, all potential beneficiaries of Frances Hadley's estate.

This case was originally filed by Fleet, as Trustee, in December, 2002. At that time the Court appointed three guardians ad litem: one to represent Art Hadley's heirs-at-law defined as of the time of Sarah Hadley's death (other than Janet Hunt and Lucille Foster); one to represent Frances Hadley's heirs-at-law, determined as of the date of Sarah Hadley's death (other that Janet Hunt and Lucille Foster); and one to represent the Estate of Thomas Hadley.

After the Court received reports from two of the guardians ad litem, and all interested parties were notified thereof, the interested parties were allowed an opportunity to proceed individually or collectively to respond to the Fleet petition. After the Court was advised that all interested parties had retained counsel to represent their interests herein, two of the guardians' ad litem were discharged from their responsibilities, and the parties responded to Fleet's Second Amended Petition.

Art Hadley's Living Trust

Art Hadley's Living Trust, executed on January 15, 1936, originally provided for a trust for the benefit of himself and his wife, to terminate upon the last of tier deaths and be distributed to their two children. Art Hadley's Trust was amended on three occasions. In accordance with the December 9, 1940 amendment, the duration of the trusts was extended through the lives of each of the Hadley children, Thomas and Sarah.

The final version of the trust, including the amendments thereto, provides in pertinent part that after the death of the survivor of Mr. and Mrs. Hadley and in the

discretion of the trustee, the Trust income was to be paid for the benefit of Art Hadley's two children, Thomas and Sarah Hadley. Upon the death of the last survivor of his children, the trust terminated and the corpus was to be disturbed in fee simple to the children and issued then living of his two children, in equal shares per stirpes. If, however, Art Hadley's children left no surviving issue, the trust contained a failure provision. The failure provision provides that the corpus be distributed as follows;

> "In case of the total failure of all of the trusts hereinbefore provided for with respect to the final disposition of the principal of the trust estate or any shares thereof, the Trustee shall transfer, convey an pay over the then principal of the trust estate, or such shares, as the case m{a}y be, discharged of these trusts, to and among those persons who would then be entitled to the personal estate of the Settlor under the laws of said State of Rhode Island had he then died intestate, a domiciled inhabitant of said State, according to the statutes of distribution then in force in said State, and in the shares and proportions provided by said statutes." (Fleet Exhibit A).

Art Hadley's Testamentary Trust

Art Hadley's Testamentary Trust, consisting of the residuary of his estate, mirrors his Living Trust, with the exception that his Testamentary Trust does not contain the above-mentioned failure clause. Specifically, Art Hadley's Testamentary Trust provides in pertinent part that after the death of the survivor of Mr. and Mrs. Hadley, and in the discretion of the trustee, the Trust was to continue for the benefit of his two children, Thomas and Sarah Hadley. Upon the death of the last survivor of his children, the trust terminated and the corpus was to be distributed in fee

simple to the children and issue then living of his two children, in equal shares per stirpes.[2]

Frances Hadley's Testamentary Trust

Frances Hadley's Testamentary Trust, executed on February 12, 1965 and amended by codicil on June 9, 1965 and September 26, 12965, consisted of the residuary of her estate. Upon her death, the residuary was divided into two separate trusts. One trust was to continue for the life of Sarah Hadley, and upon her death it was to be distributed to her issue per stirpes. The second trust was to continue for the life of Thomas Hadley, unless upon his death, his widow was living, in which case it would continue until her death. Upon the death of the survivor of Thomas or Betty Hadley, the assets of the trust were to be distributed to issue of Thomas Hadley per stirpes.

Frances Hadley's Will, unlike the instruments created by Art Hadley, defines the term issue. Paragraph D of Article Fist states: "{t}he term "issue" as used in this will, with reference to issue of mine or of a child of mine, shall include adopted children of that child and issue of such adopted children." Additionally, Frances Hadley's testamentary Trust contains a failure provision. That provision reads as follows:

> "If at the time provided for the distribution of any share held in trust under this will no issue of mine are living, the trustee shall divide and distribute the share among those persons who would then be my next of kin entitled to

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[2] The original distribution scheme, like that in Art Hadley's Testamentary Trust, provided a fee simple transfer of the corpus to his children, Thomas and Sarah Hadley, upon the death of Art Hadley's wife, Frances Hadley. Thereafter, Art Hadley's Testamentary Trust was amended by codicil on December 9, 1940 to establish a trust for the benefit of his children, and to follow the distribution scheme outlined above.

distribution thereof if I then died intestate, unmarried, domiciled in the State of Rhode Island and possessed of such share as my personal estate, and the division and distribution shall be in shares and proportions provided in the law of Rhode Island then in force for distribution of personal property of an intestate decedent." (Fleet Exhibit A). See Art Hadley's heirs-at-law Memo at 19-20.[3]

Analysis

The central issue before this Court is the right of adult adoptee to inherit from the lineal ancestors of their adoptive parents. Section 15-716 of the Rhode Island General Laws governs the inheritance rights of adoptive kindred. Specifically, this section provides in pertinent part:

> "(a) A child lawfully adopted shall be deemed, for the purpose of inheritance by the child and his or her descendants from the parents by adoption, and for the purpose of inheritance by the parents by adoption, and the lineal and collateral kindred of the parents by adoption, from the child and his or her descendants, and for all other legal consequences and incidents of the natural relation of parents and children, except as provided in § 15-7-17, the child of the parents by adoption the same as if he or she had been born to them in lawful wedlock. In the construction of any instrument, whether

[3] This Court notes that this concession is made with regard to Art Hadley's heirs-at-law. With regard to Cynthia Gay, who is a stakeholder as both an heir-at-law of Art Hadley and a beneficiary of the estate of Sarah Hadley, this Court will distinguish between these interests. Therefore, reference to Art Hadley's heirs-at-law includes Cynthia Gay in that capacity, but this consideration is separate and apart from Cynthia Gay in her capacity as a beneficiary of Sarah Hadley's estate.

executed before or after May 8, 1956, a child so adopted and the descendants of the child shall be deemed within a limitation to the lawful heirs, issue, children, descendants, or the like, as the case may be, of the parent or parents by adoption, unless a contrary intention shall appear by the terms of the instrument or unless the particular estate so limited has vested in and as to the person or persons entitled to it on April 20, 1962; provided, that this sentence shall not apply in the construction of any instrument as to any child who is over the age of eighteen (18) years at the time of his or her adoption and who is adopted dafter the death of the maker of the instrument." G.L.1956 § 15-7-16(a) (emphasis added).

The Rhode Island Supreme Court has repeatedly held that "when the language of a statute is clear and unambiguous, [the] Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." Tinney v. Tinney, 799 A.2d 235, 237 (R.I. 2002) (citing Mottola v. Cirello, 789 A.2d 421, 423 (R.I. 2002)). Section 17-7-16a) clearly provides that adoptees are entitled to the same inheritance rights as natural born children. The only exception to this rule is that in the construction of any instrument, a child over the age of eighteen years old will not be treated as an heir-at-law if he/she was adopted subsequent to the death of the maker of the instrument.

The Distribution of Art Hadley's Living Trust

The plain language of §15-7-16(a) precludes the adopted daughters of Thomas Hadley from taking as beneficiaries under the trust instrument, which provided for the fee simple, per stirpes, distribution to the living

issue of Art Hadley's two children. The fact that Thomas Hadley adopted his two daughters, Janet Hunt and Lucille Foster, as adults, and after the death of the maker of the trust instrument, precludes Janet Hunt and Lucille Foster from being treated as beneficiaries under a construction of the trust instrument. According to the language of the trust, however, if there is a total failure of the trust with respect to the final disposition of the trust principal at the time of the distribution, then the trust fails and the laws of intestacy in effect at the time of the trust failure govern the distribution of the trust assets.[4] In that regard, the Rhode Island Supreme Court's examination of § 15-7-16(a) in Tinney v. Tinney, 799 A.2nd at 237-38, is germane to the distribution under the intestacy laws.

In Tinnery, the Rhode Island Supreme Court held that § 15-7-16(a)'s distinction between adult adoptees and minor adoptees is not applicable under the laws of intestacy. In that case, the adoptive parent, Ruth Tinnery, was an eighty four-year old woman and the adoptee, Kevin Tinney, a thirty eight-year old man. Id. At 235. Upon Ruth Tinney's death, Kevin Tinney moved the Court to declare

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[4] The law of intestacy relevant in the instant case is § 33-1-10, the statute governing personal property. The statute provides the following:

> "33-1-10. Surplus personalty not bequeathed. – the surplus of any chattels or personal estate of a deceased person, not bequeathed, after the payment of his or her just debts, funeral charges, and expenses of settling his or her estate, shall be distributed by other of the probate court which shall grant administration in the manner following: (1) The sum of fifty thousand dollars ($50,000) from the surplus and one-half (1/2) of the remainder to the widow or surviving husband forever, if the intestate died without issue. (2) One-half (1/2) of the surplus to the widow or surviving husband, forever, if the intestate died leaving issue. (3) the residue shall be distributed among the heirs of the intestate in the same manner real estates descend and pass by this chapter, but without having any respect to the life estate and discretionary allowance provided by § 33-1-5 and 33-1-6."

his inheritance rights under the laws of intestacy, and Ruth Tinney's natural born son, Donald Tinney objected. Id. At 236. Donald Tinney asserted that § 15-7-16(a), specifically refers to "child" as opposed to persons. Id. Rejecting this narrow interpretation of § 15-7-16(a), the Court found "the Legislature intended the term "child" to mean son or daughter of a parent, regardless of age, and that there was not distinction intended between the inheritance rights of a "child" adopted as a minor and "persons" adopted as adults." Id. At 237-38. In reaching this conclusion, the Tinnery Court quoted from its decision in Prince v. Nugent, 93 R.I. 149, 168, 172 A.2d 743, 754 (1961), wherein the Court held that "such statutes as are intended to integrate adopted children into family units and thus promote the public interest in the preservation of the family are to be liberally construed in favor of the adopted child." Id.

Furthermore, the proposition that Tinney is not applicable in the instant case because Tinney concerned a decedent who made the active choice to adopt an adult son is unavailing. The Tinney Court did not premise its decision on the fact that Ruth Tinney herself adopted Kevin Tinney, but rather upon the Court's well established maxim "that adopted children 'are deemed to be heirs of their adoptive parents, as if they were their natural children.'" Tinney, 799 A.2d at 237 (quoting In re Lisa Diane G., 537 A.2d 131, 132 (R.I. 1988)). Nothing in the Court's language suggests that Tinney's holding is limited to adult adoptees who have been directly adopted by the decedent. Moreover, such a narrow interpretation of Tinney's holding would undermine the Court's observation that the public interest is served by construing such statutes in favor of the adopted child. In addition, the only exception to the broad thrust of § 15-7-16(a) is that the statutory intent to include adopted children as heirs is limited only in one narrow instant-that is that "in the construction on any instrument' adult adoptees are excluded if adopted after the death of the maker. Since the instrument triggers the laws of intestacy the Court is not engaged in the "construction of

any instrument." Guided by the plain language of § 15-7-16(a) and Tinney's holding, this Court finds that the laws of intestacy in effect on January 3, 2002 give Thomas Hadley's adopted daughters the same inheritance rights as would be accorded his biological children, regardless of the age at which they were adopted.

Art Hadley's heirs have argued that there are significant public policy reasons for the Court to be wary of affording lifetime beneficiaries under testamentary devises a "blank check" to manufacture heirs by adoption that the testator/settler never knew or even contemplated. See, e.g., Minary v. Citizens Fidelity Bank & Trust Co., 419 S.W. 2d 340 (Ky. 1967); Wilson v. Johnson, 389 S.W. 2d 634 (Ky. 1965); Estate of Mary Comley, 218 A.2d 175 (N.J. Super. Ct. 1966). In none of the cases cited to the Court, however, did the testator or settler include in the instrument a specific failure provision invoking the laws of intestacy. Art Hadley, even though he had died before his son Thomas adopted the adult children of his wife Betty, was not silent on how he intended his trust to be distributed if for any reason, at the time of the termination n of the trust, he did not have grandchildren who were able to take under the trust. He provided, in no uncertain terms that in that case the laws of intestacy should govern the distribution. The Court is obliged to follow the intent of Art Hadley as expressed in the trust instrument.

Notably, the majority of jurisdictions recognize adult adopted children as enjoying the same rights under the laws of intestacy as natural-born children. See Gorman v South Caroling Reinsurance Facility, 333 S.C. 696, 511 S.E.2d 98 (S.C. Ct. App. 1999) (adult adoption statute limits the legal effect of adult adoption to intestate succession); see also NJ.SA. 3B:5-9 extending the intestacy rights of adoptive children under N.J.S.A. 2A:22-3 to persons adopted as adults). See generally Adam J. Hirsch, *colloquium: Deborah L. Rhodes access to Justice Article: Default Rules in Inheritance Law: A Problem in Search of its Context, 73* FORDHAM L. REV. *1031, 1089 (2004).*

Consequently, this Court finds that Janet Hunt and Lucille Foster, under the laws of intestacy in effect in 2002, are Art Hadley's heirs-at-law, and therefore Art Hadley's living trust should be divided equally between them.[5]

The Distribution of Art Hadley's Testamentary Trust

For the reasons stated above, according to the plain language of G.L. 1956 § 15-7-16(a), Thomas Hadley's adopted children may not take under a construction of the trust instrument as issue of the children of Thomas Hadley, [I]n contrast to the living trust, however, Art Hadley's testamentary trust does not contain a failure clause, and there is not competent evidence by which this Court can justifiably incorporate the living trust's failure clause into the testamentary trust.[6] Therefore, this Court must apply the laws of intestacy to the distribution of Art Hadley's testamentary trust, as they would generally be applied in a situation where the decedent died intestate. See G.L. 1956

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[5] Those heirs arguing against inclusion of Thomas' adopted daughters as distributees under the laws of intestacy also argue that since Janet Hunt and Lucille Foster are barred by G.L. § 15-7-16(a) from taking directly under the trust instrument, it would be unjust to allow them to "back door" their interest through the failure provisions of the trust instrument. Although this presents and intriguing equitable argument, the Court is constrained by the explicit and unambiguous terms of both the trust instrument and the statute.

[6] Counsel for Hunt and Foster, as well as counsel for the heirs of Art Hadley, suggest that it must be presumed that because Mr. Hadley had executed a Second Codicil to his Will, and a Third Amendment to his Living Trust on the same day, it must be the result of a "scrivener's error" that the identical provisions for trust failure were not contained in both the Living Trust as well as the Testamentary Trust, Thus, these parties argue that Mr. Hadley's heirs, for purpose of the distribution of the Testamentary Trust, should be determined as of the date of the failure of the trust (2002), rather than the date of Mr. Hadley's death. This Court is not persuaded that such circumstances require the Court to rewrite the Testamentary Trust to include language used in the other instrument. The logic that the lack of inclusion was not intended is not persuasive. It is certainly equally arguable that skilled and capable estate planning professionals may have suggested that the trust set up in the will apply a different mode of distribution than that in the trust. The Court simply cannot assume that because the instruments were executed on the same day, and formed part of the same estate plan, that the failure provisions must be deemed identical.

§ 15-7-16(a) ("All real and personal property, not devised or bequeathed in the last will and testament of any person shall be distributed in the same manner as if the person had died intestate.")

In determining who are Art Hadley's heirs-at-law, the Rhode Island Supreme Court has held, in Champagne v. Fortin, 69 R.I. 10,20,30,A.2d 838. 843 (1943), that in the absence of language evidencing a contrary intent of the testator, the heirs-at-law are determined as of the date of the decedent's death. Although counsel for the Art Hadley heirs suggest that the doctrine set forth in Champagne is not representative of the modern trend to determine heirs as of the date of distribution, our Supreme Court has not departed from the Champagne rule of construction, despite having had the opportunity to do so. See Redmond v. Manufactures Hanover Trust Co., 484 A.2d 906 (R.I. 1984).

At the time of Art Hadley's death, Frances Hadley , Thomas Hadley, and Sarah Hadley were all still living and therefore constitute his heirs-at-law. The laws of intestacy provide that the personal estate of a deceased person be distributed as follows: one half of the estate to the living spouse, and the remaining one half of the estate is to be divided equally among the decedent's children. R.I. Gen. Law. § 33-1-10. Accordingly, Art Hadley's Testamentary Trust should be distributed one half to Frances Hadley's estate, one quarter to Thomas Hadley's estate, and one quarter to Sarah Hadley's estate.

The Distribution of Frances Hadley's Testamentary Trust

Mrs. Hadley's Last Will and Testament (as modified in two subsequent codicils), placed the residuary of the estate into trust, and divided the trust estate into two equal shares, one for Thomas and one for Sarah. Thomas'[s] share must remain in trust at this time, since his widow Betty is still alive and is entitled to some or all of the trust income or principal, at the discretion of the Trustee, for the

remainder of her life. Sarah Hadley's share of the trust, however, must be distributed now.

Upon Sarah's death, her share of Mrs. Hadley's testamentary trust must be distributed to Sarah's issue then living per stripes. Since Sarah died without children, the [W]ill (Paragraph C of the First Article contains a "failure of issue" clause providing for the distribution to go to Frances Hadley's next of kin entitled to distribution under the laws of intestacy. Frances Hadley's next of kin under the laws of intestacy in effect on the date of the trust failure are Janet Hunt and Lucille Foster, her grandchildren by adoption.

The beneficiaries of Sarah Hadley's estate assert, however, that the words "adopted children" as contained in the will do not refer to adult adoptees, and therefore Janet Hunt and Lucille Foster do not have any inheritance rights under Frances Hadley's testamentary trust. Reply Brief of Marcia Hanrahan, As Executrix of the Estate of Sarah Hadley at 4-5. This argument misses the mark. Because Frances Hadley's daughter Sarah died without issue (adopted or natural), the "failure of issue" clause in the will was triggered, That clause requires that the trust assets be disturbed to Frances' "next of kin entitled to distribution thereof if I then died intestate." For purposes of intestate succession, G.L. 1956 § 15-7-16(a) treats adopted children, whether adopted as adults or as minors, as next of kin for purposes of inheritance. See Tinney, 799A. at 237-38. Mrs. Hadley's definition of "issue" in her will simply supports the statutory result that the adopted children of Sarah's brother Thomas, in this case Janet Hunt and Lucille Foster, are the proper parties to receive the distribution from Mrs. Hadley's testamentary trust which was to continue for the life of Sarah Hadley, and terminate upon Sarah's death.

Conclusion

Based upon the above construction of the three Hadley trusts, the parties shall submit an appropriate order regarding the distribution of the assets of said trust, and declaring the rights of the parties therein.

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

FLEET NATIONAL BANK, :
:
VS. : M. P. No. 2002-6899
:
JANET, LUCILLE FOSTER, :
MARCIA HANRAHAN, AS :
EXECUTREX OF THE ESTATE :
OF SARAH HADLEY AND :
INDIVIDUALLY, CYNTHIA :
GAY, ET AL :

ORDER

This matter came before this Honorable Court, Justice Rubine presiding, on Fleet National Bank's Second Verified Petition for Construction of Trust and Order of Distribution, concerning Trusts established by Art and Frances Hadley. Upon consideration and for the reasons set forth in the Court's March 9, 2005 bench decision it is hereby:

ORDERED, ADJUDGED and DECREED

1. The petitioner is the proper party to bring this action;

2. All of the necessary Respondents are parties to this proceeding and all have received appropriate notice of this proceeding;

3. The Art Hadley Trust U/I dated January 15, 1936, as amended (also known as "Art Hadley's Living Trust")

shall be distributed in equal shares to Janet Hunt and Lucille Foster;

4. The Art Hadley Trust U/W dated January 24, as amended (also known as "Art Hadley's Testamentary Trust"), shall be distributed as follows: one-half to the Estate of Frances Hadley, one-quarter to the Estate of Thomas Hadley and one-quarter to the Estate of Sarah Hadley;

5. The share of the Frances E. Hadley Trust U/W dated February 12, 1965, as amended (also known as "Frances Hadley's Testamentary Trust") that was held for the benefit of Sarah Hadley shall be distributed in equal shares to Janet Hunt and Lucille Foster;

6. Fleet National Bank, as trustee of the three Hadley Trusts, is hereby released from any and all liability resulting from its distribution of said Trusts in accordance with this Court's order, and;

7. Counsel shall submit fee petitions, if any, no later than May 2, 2005, with a hearing on such fee petitions to be scheduled at a time that is mutually convenient for the Court and counsel, and in any event shall be held no later than May 31, 2005

ENTER:

/s/ Justice Rubine
Justice

/s/ Linda B. Parson
4/15/05 Clerk

STATE OF RHODE ISLAND SUPERIOR COURT
PROVIDENCE, SC

FLEET NATIONAL BANK,	:	
	:	
VS	:	**M.P. No. 2002-8996**
	:	
JANET, LUCILLE FOSTER,	:	
MARCIA HANRAHAN, AS	:	
EXECUTREX OF THE ESTATE	:	
OF SARAH HADLEY AND	:	
INDIVIDUALLY, CYNTHIA	:	
GAY, ET AL	:	

FINAL JUDGMENT

This is entered as a final judgment in the Superior Court for the above-captioned matter. After numerous hearings thereon and consideration thereof, it is finally adjudged as follows:

1. Petitioner, Fleet National Bank, a/k/a Bank of America, N.A., as trustee of certain trusts established by Art and Frances Hadley, is the proper party to bring this action;

2. All of the necessary Respondents are parties to this proceeding and all have received appropriate notice of this proceeding;

3. The Art Hadley Trust U/I dated January 15, 1936, as amended (also known as "Art Hadley's Living Trust") shall be distributed in equal shares to Janet Hunt and Lucille Foster;

4. The Art Hadley Trust U/W dated January 24, as amended (also known as "Art Hadley's Testamentary Trust"), shall be distributed as follows: one-half to the Estate of Frances Hadley, on-quarter to the Estate of Thomas Hadley and one-quarter to the Estate of Sarah Hadley;

5. The share of the Frances E. Hadley Trust U/W dated February 12, 1965, as amended (also known as "Frances Hadley's Testamentary Trust") that was held for the benefit of Sarah Hadley shall be distributed in equal shares to Janet Hunt and Lucille Foster;

6. The fee petitions of Paul A. Brule, Esq., Scott O. Diamond, Esq., Arthur M. Read II, Esq., John S. Pfarr, Esq., David J. Strachman, Esq., John M. Harpootian, Esq. and Edmund C. Bennett, Esq. are herby granted in part, and as more fully described below;

7. The report of the Trustee on said Fee Petitions is hereby accepted;

8. Fleet National bank, as trustee of said Hadley Trusts, is hereby authorized to pay the following legal fees and costs on a pro rata basis from said Trusts:
    a. $9,723.00 to Edmund C, Bennett;
    b. $74,116.00 to Paul A. Brule and Scott O. Diamond;
    c. $47,934.38 to John M. Harpootian;
    d. 93,856.54 to John S, Oar;
    e. $34,000.00 to David J. Strachman; and
    f. $75, 460.95 to Arthur M. Read II.

9. Payment of said fees and costs shall represent payment in full to said attorneys for all Superior

Court work performed in this mater up and through the entry of this Final Judgment; and

10. Fleet National Bank, as trustee of the said three Hadley Trusts, is hereby released from any and all liability resulting from its distribution of said Trusts in accordance with this Court's Final Judgment, including the payment of said legal fees and costs as set forth herein.

ENTER:

/s/ Judge Rubine
Date 6/24/05

/s/ Janet Dorsey
Deputy Clerk

Presented by:

/s/ Leon C., Boghossian
Leon C., Boghossian III (#3557)
Hinckley, Allen & Snyder LLP
15000 Fleet Center
Providence, RI 02903-2393
(401) 274-2000

Supreme Court

No. 2005-204-Appeal
(PM 02-6899)

Fleet National Bank et al. :

v. :

Janet Hunt et al. :

NOTICE: This opinion is subject to formal revisions before publication in the Rhode Island Reporter. Readers are requested to notify the Opinion Analyst, Supreme Court of Rhode Island, 250 Benefit Street, Providence, Rhode Island, 02903 at Tel. 222-2358 of any typographical or other format errors in order that corrections may be made before the opinion is published.

Supreme Court

No. 2005-204-Appeal.
(PM 02-6899)

Fleet National Bank et al. :

Vs.

Janet Hunt et al. :

Present: Williams, C.J., Goldberg, Flaherty, and Suttell, JJ.

O P I N I O N

Chief Justice Williams, for the Court. The appellants, Ronald Gay and Wylma Cooley (appellants), appeal from a Superior Court order directing the distribution of assets under two trusts. This case originated when petitioner, Fleet National Bank (Fleet), petitioned the Superior Court for instructions about the proper distribution of assets under three trusts, for which it serves as trustee. The three trusts are the Art Hadley Trust U/I dated January 15, 1936 (the Art Hadley Living Trust), the Art Hadley Trust U/W dated January 24, 1933 (the Art Hadley Testamentary Trust), and the Frances E. Hadley Trust U/W dated February 12, 1965 (the Frances Hadley Trust) collectively the Hadley trusts).[7]

To determine the proper distribution of the trusts' assets, the Superior Court was presented with two questions; (1) whether adult adoptee can inherit from the lineal ancestors of their adoptive parents when the trust itself directs the trustee to apply Rhode Island's intestacy laws for purposes of distributing the trust's assets and (2) whether adult adoptees are excluded from the definition of

[7] Although the Superior Court was asked to construe the Frances Hadley Trust, that trust has no significance to his appeal because appellants do not assert an interest in that trust.

"issue" as used in a trust agreement. The Superior Court answered each question in the affirmative, which effectively precluded appellants from inheriting under either trust.

After reviewing both the trusts and the relevant law in this state, we reach the same conclusion. Accordingly, we affirm the judgment of the Superior Court.

I
Facts and Travel

The facts of this case were largely established in an agreed-upon statement of facts submitted to the Superior Court and are not contested on appeal.

Art Hadley, a self-made entrepreneur and Providence businessman, died on May 27, 1941. He was survived by his wife, Frances E. Hadley, and his two children, Thomas Hadley and Sarah Hadley. Thomas Hadley married Betty Hadley on March 8, 1962. At the time of her marriage to Thomas Hadley, Betty Hadley had two children, Janet Hunt and Lucille Foster. Frances Hadley died on August 25, 1968. On March 11, 1976, Thomas Hadley adopted the daughters of his wife, Betty, Janet Hunt and Lucille Foster, both of whom were over eighteen years, old. In 1993, Thomas Hadley died, having no biological children but survived by Betty Hadley and his two adopted daughters, Janet Hunt and Lucille Foster. Sarah Hadley died childless and unmarried on January 3, 2002. Her death triggered the distribution of the two Hadley trusts in dispute. At the time of her death, Art Hadley had no surviving children, or biological grandchildren, or biological issue. However, Thomas Hadley's two adopted daughters, Janet Hunt and Lucille Foster, were living.

A
The Art Hadley Living Trust

Before his death in 1941, Art Hadley established both a living trust and a testamentary trust. The Art

Hadley Living Trust, executed on January 15, 1936, established a trust for the benefit of Art Hadley and his wife, Frances Hadley, that would terminate upon the last of their deaths and would be distributed to their children. On three subsequent occasions, Art Hadley amended this trust. The third amendment, on December 9, 1940, is the only amendment that affects the distribution of the trust assets.

In its final form, the Art Hadley Living Trust establishes a trust for the benefit of Art Hadley's wife, Frances Hadley, and his two children, Thomas Hadley and Sarah Hadley. According to the trust's terms, upon Frances Hadley's death, the trust income was to be paid, in the trustees' discretion for the benefit of Art Hadley's two children, Thomas Hadley and Sarah Hadley. Upon the death of the last survivor of Art Hadley's Children or his wife, the trust would terminate and the corpus would be distributed in fee simple to the children and issue then living of his two children, in equal shares per stripes. If, however, Thomas Hadley or Sarah Hadley left no surviving issue, the trust contained a failure provision. That provision instructed:

> "In case of the total failure of all of the trusts hereinbefore provided for with respect to the final deposition of the principal of the trust estate or any shares thereof, the trustee shall transfer, convey and pay over the then principal of the trust estate, or such shares, as the case may be, discharged of these trusts, to and among those persons who would then be entitled to the personal estate of the Settlor under the laws of said State of Rhode Island had he then died intestate, a domiciled inhabitant of said state, according to the statues of distribution then in force in said State, and in the shares and proportions provided by said statutes."

B
The Art Hadley Testamentary Trust

Through his will, dated January 24, 1933, and amended by two codicils, Art Hadley established the At Hadley Testamentary Trust, consisting of the residue of his estate.

The Art Hadley Testamentary Trust provided that upon the death of the survivor of Art Hadley and his wife, Frances Hadley, the trust was to continue for the benefit of his children, Thomas Hadley and Sarah Hadley. The trust was to terminate upon the death of the last survivor of his children, at which time the corpus was to be distributed in fee simple to the children and issue then living of his two childe, in equal shares per stirpes.

C
Fleet's Petition

In late 2002, Fleet, in its capacity as trustee of the Hadley Trusts, petitioned the Superior Court seeking instructions about the proper construction of language used in these trusts and instructions relative to the proper distribution of funds under these instruments. Specifically, Fleet informed the court that uncertainties in Rhode Island law with respect to the inheritance rights of adopted adult children, coupled with ambiguities in the language of the trusts, compelled it to seek the court's instructions to avoid liability in distributing the trust's assets.

The respondents, all parties who asserted an interest in the trusts, are as follows: (1) Janet Hunt and Lucille Foster, the adopted children of Thomas Hadley; (2) Marcia Hanrahan, the executrix and a potential beneficiary of Sarah Hadley's estate; (3) Cynthia Gay, a potential beneficiary of Sarah Hadley's estate;[8] (4) Allyson Gay,

[8] Cynthia Gay died on October 17, 2006, after this appeal was taken. Her interest is represented in this matter by her daughter, Sarah Gay Dagher, in her capacity as personal representative of the estate of Cynthia Gay.

Wendy Gay, Robert Seeley, Diana Robertson, Suzanne Beyer, Cynthia Gay, Sheila Gay Franklin, Ronald Gay, Wylma Cooley, Stephen Gay, and Nancy Miller, all beneficiaries of Art Hadley's estate; (5) Stephen R. Lucas, Donald J. Lucas, Jeffrey C Lucas, Fay C. Drummond, Raymond J. Harrison,[9] R. Carol Justice, Clair Perry, Elizabeth Robinson, Brigette Young, Sigrid J. Reddon, Sharon Glover, Eugene E. Perry II, Jane Cranston,[10] and S. Bruce Allsop, all potential beneficiaries of Frances Hadley's estate (collectively respondents).

On March 9, 2005, Superior Court issued a written opinion in which it concluded that this Court's opinion in Tinney v. Tinney, 799 A..2d 235, 237-38 (R.I. 2002), made it clear that under Rhode Island's intestacy laws, there is no distinction between adult adoptees and minor adoptees. Therefore, under Rhode Island's intestacy laws adult adoptees are deemed heirs of their adoptive parents, as if they were their natural children.

Adhering to this principle, the Superior Court ruled that Thomas Hadley's two adopted daughters, Janet Hunt and Lucille Foster, stood to inherit under the failure provision of the Art Hadley Living Trust. With respect to the Art Hadley Testamentary Trust, however, the Superior Court ruled that Janet Hunt and Lucille Foster were not lawfully the "issue" of Thomas Hadley and were, therefore, not entitled to the amount specifically designated for Thomas Hadley's "issue" under the trust.

Dissatisfied with the Superior Court's ruling, every respondent, with the exception of Janet Hunt and Lucille Foster, appealed to this Court.

---

[9] Raymond J. Harrison died on October 6, 2006 after this appeal was taken. His interest is represented in this matter by Winford T. Frady Jr , in his capacity as administrator of the estate of Raymond J. Harrison.

[10] Jane Cranston Died on August 19, 2006, after this appeal was taken. Her interest is represented in this matter by her heirs-at-law, Jane Cranston Frazier and Richard R. Cranston Jr.

Before the matter reached this Court for briefing and argument, all parties, except appellants, agreed upon the appropriate settlement of all matters raised by Fleet's petition thought this Court's Appellate Mediation Program. Accordingly, a distribution order was entered, providing the settling parties with a fixed percentage of the settlement corpus. Pursuant to the order, an amount equal to the maximum amount claimed by appellants was set aside, in the event that either of these two parties prevailed on appeal.

With many of these matters disposed of, the only question remaining before this Court on appeal is the interpretation of the two trusts in which appellants Ronald Gay and Wylma Cooley claim an interest.

II
Analysis

In their pro se appeals to this Court, appellants argue that the trial justice erred in his interpretation of both the Art Hadley Living Trust and the Art Hadley Testamentary Trust. The appellants argue that it was an error for the trial justice to permit the Art Hadley Living Trust to be distributed to two women who were over the age of eighteen when they were adopted by Art Hadley's son. They further argue that the trial justice erred when he defined Art Hadley's heirs for purposes of distributing the Art Hadley Testamentary Trust as those individuals living at the time of Art Hadley's death. Rather, appellants urge this Court to overrule the law set forth in prior cases and hold that Art Hadley's heirs should be ascertained as of the time of the trust's failure.[11]

---

[11] The appellants also argue that they are entitled to a per capita, not a per stirpes distribution of the trust assets. Because we decide that appellants do not stand to inherit under the trusts at all, we need not address this issue.

A
Standard of Review

The interpretation of a trust instrument presents a question of law that this Court reviews de novo. Arena v. City of Providence, 919 A.2d 379, 387 (R.I. 2007); see also In re Trusts Created by Ferguson, 929 P.2d 33, 35 (Coo. Ct. App. 1996); In re Trusteeship Created by the City of Sheridan, Colorado, 593 N.W.2d 702, 708 (Minn. Ct. App. 1999). We conduct a de novo review to determine whether the trial justice committed legal error because "this Court is in the best position to decided the merits of a given question of law." Lett v. Providence Journal Co., 798 A.2d 355 363 (R.I. 2002) (quoting Votolato v. Merandi, 747 A.2d 455, 460 (R.I. 2000)).

B
Distribution of the Art Hadley Living Trust

With respect to the Art Hadley Living Trust, appellants urge this Court to recognize that Art Hadley intended to benefit only his blood relatives and not his adoptive grandchildren. Janet Hunt and Lucille Foster, however, contend that the trial justice properly recognized their interest in the trust in accordance with Rhode Island intestacy laws.

We begin our analysis by looking to the plain language of the trust itself, in an effort to effectuate the settlor's intent. Indeed, we have held that "[t]his court's 'primary objective when construing language in a will or trust is to ascertain and effectuate that intent of the testator or settlor as long as that intent is not contrary to law.'" In re DiBiasio, 705 A.2de 972, 973 (R.I. 1998) (quoting Prince v. Roberts, 436 A.2d 1078, 1080 (R.I. 1981)).

The Art Hadley Living Trust provides for the final distribution of the trust estate to the living "issue" of Art Hadley's two children, Thomas Hadley and Sarah Hadley. Unfortunately, the trust itself is silent about the definition of issue. In the context of wills and estates, Black's Law

Dictionary defines issue as "lineal descendants; offspring." Black's Law Dictionary 850 (8th ed. 2004). Further complicating the distribution of the Art Hadley Living Trust, neither Thomas Hadley nor Sarah Hadley had any biological children. The only individuals who potentially could qualify as "issue" are Thomas Hadley's adopted daughters, Janet Hunt and Lucille Foster, leaving this Court to resolve whether they are lawfully Thomas Hadley's "issue", as referred to in the Art Hadley Living Trust.

General Laws 1956 § 15-7-16 governs the extent to which adoptive kindred may inherit from an adoptive parent. Subsection (a) of § 15-7-16 provides in relevant part:

> "A child lawfully adopted shall be deemed, for the purpose of inheritance by the child and his or her descendants from the parents by adoption and the lineal and collateral kindred of the parents by adoption, and for the purpose of inheritance by the parents by adoption, and the lineal and collateral kindred of the parents by adoption, from the child and his or her descendants, and for all other legal consequences and incidents of te natural relation of parents and children, except as provided in § 15-7-`7, the child of the parents by adoption the same as if he or she had been born to them in lawful wedlock."

In Tinney, this Court interpreted this statutory language and concluded that the General Assembly intended the term "child" to mean "son or daughter of a parent, regardless of age, and that there was no distinction intended between the inheritance right of a 'child' adopted as a minor and 'persons' adopted as adults." Tinney, 799 A.2d at 237-38. Based on this conclusion, we held that an adoptee, who was thirty-eight years old at the time of his

adoption, could inherit from his adoptive mother under Rhode Island's intestacy laws. Id. at 235, 237-38.

Although appellants recognize our holding in Tinney, they contend that the exclusion contained in § 15-7-16(a) applies to this case and should operate to exclude Janet Hunt and Lucille Foster from inheriting under Art Hadley's testamentary trust. The statutory exclusion provides, in relevant part:

> "In the construction of any instrument, whether executed before or after May 8, 1956, a child so adopted and the descendants of the child shall be deemed within a limitation to the lawful heirs, issue, children, descendants, or the like, as the case may be, of the parent or parents by adoption, unless a contrary intention shall appear by the terms of the instrument or unless the particular estate so limited has vested in and as to the person or persons entitled to it on April 20, 1962; provided, that this sentence shall not apply in the construction of any instrument as to any child who is over the age of eighteen (18) years at the time of his or her adoption and who is adopted after the death of the maker of the instrument." Section 15-7-16(a). (Emphasis added.)

This Court's primary focus when construing a statue is to determine the General Assembly's underlying intent and to give it effect. Tinney, 799 A.2d at 236-37 (citing R & R Associates v. City of Providence Water Supply Board, 765 A.2d 432, 436 (R.I. 2001)). "[W]hen the language of a statute is clear and unambiguous, this Court must interpret the statue literally and must give the words of the statute their plain and ordinary meanings." Id. at 237 (quoting Mottola v. Cirello, 789 A.2d 421, 423 (R.I. 2002)).

Examining the plain language of the statute as a whole, we reach three conclusions with respect to the rights of adoptees to inherit from the lineal ancestors of his or her adoptive parents. First, under Rhode Island law, all children eighteen years of age or younger at the time of their adoption may inherit from the lineal ancestors of their adoptive parents. See Tinney, 799 A.2d at 237. Second, under Rhode Island intestacy law, individuals who are over the age of eighteen at the time of their adoption may inherit from the lineal ancestors of their adoptive parents. See id. Third, when construing a writing, the definition of "lawful heirs, issue, children, [or] descendants" does not include those persons who were over the age of eighteen at the time of their adoption. Section 15-7-169(a).

Our interpretation of § 15-7-169(a) precludes Janet Hunt and Lucille Foster from being considered Thomas Hadley's "issue", as that term is used in the Art Hadley Living Trust, because they were over the age of eighteen at the time of their adoption. Therefore, the distribution of assets contemplated in the Art Hadley Living Trust failed in its entirety.

This conclusion, however, does not end our analysis. Perhaps foreseeing that the provisions for the trust's distribution could fail, the Art Hadley Living Trust also included a failure clause, which specified that in the case of the trust's failure, Rhode Island's intestacy laws should be applied to distribute the remaining trust assets.

Accordingly, we must determine the beneficiaries of the Art Hadley Living Trust under Rhode Island intestacy law in effect at the time of the trust's failure-Sarah's death in 2002. General Laws 1956 § 33-1-10, in place in 2002, governs the distribution of personal property. The statute provides:

> **"Surplus personality not bequeathed.**-The surplus of any chattels or personal estate of a deceased person, not bequeathed, after the payment of his or her just debts, funeral

charges, and expenses of settling his or her estate, shall be distributed by order of the probate court which shall grant administration in the manner of following:

"(1) The sum of fifty thousand dollars ($50,000) from the surplus and one-half (1/2) of the remainder to the widow or surviving husband forever, if the intestate died without issue.

"(2) One half (1/2) of the surplus to the widow or surviving husband, forever, if the intestate died leaving issue.

"(3) The residue shall be distributed among the heirs of the intestate in the same manner real estates descend and pass by this chapter, but without having any respect to the life estate and discretionary allowances provided by §§33-1-5 and 33-1-6."

Furthermore, § 33-1-1 governs the distribution of real estate. That statute provides:

"**Real estate descending by intestacy to children or descendants, parents, or brothers and sisters.**"-Whenever any person having title to any real estate of inheritance shall die intestate as to such estate, it shall descend and pass in equal portions to his or her kindred, in the following course:

"(1) First to his children or their descendants, if there are any.

"(2) Second if there be no children nor their descendants, then to the parents in equal shares, or to the surviving parent of such intestate.

"(3) Third if there is not parent, then to the brothers and sisters of the intestate, and their descendants."

These statutes, read together, make it clear that the surplus of the Art Hadley Living Trust should be distributed to Art Hadley's kindred. At the time of Sarah Hadley's death, Art Hadley's wife, Frances Hadley, and son, Thomas Hadley, were deceased. The only remaining question is whether Janet Hunt and Lucille Foster qualify as Art Hadley's Kindred. Because we already have determined that, pursuant to Rhode Island intestacy law an adopted adult qualifies as an heir, issue, child, or descendant of his or her adoptive parent, we conclude that Janet Hunt and Lucille Foster are the proper beneficiaries of the Art Hadley Living Trust.

C

Distribution of the Art Hadley Testamentary Trust

Much like the Art Hadley Living Trust, the Art Hadley Testamentary Trust provided for the ultimate distribution of the trust corpus to the children and issue of Art Hadley's children, in equal shares per stirpes. This distribution was to take place upon the death of the survivor of Art Hadley's children.

Therefore, the trust corpus was to be distributed at the time of Sarah Hadley's death in 2002 to the children and issue then living of Thomas Hadley and Sarah Hadley. However, neither Thomas Hadley nor Sarah Hadley left any natural issue. Furthermore, as indicated by the foregoing analysis, when interpreting the term "issue" for the purposes of construing a trust instrument, adoptees who were over the age of eighteen at the time of their adoption do not qualify as "issue" of their adoptive parents. Therefore, Janet Hunt and Lucille Foster cannot be considered "issue" of Thomas Hadley as defined by the Art Hadley Testamentary Trust. Accordingly, the absence of any issue caused the trust to fail in 2002.

Unlike the Art Hadley Living Trust, the Art Hadley Testamentary Trust did not contain a failure clause. Therefore, Rhode Island's intestacy laws must be applied to ascertain the proper beneficiaries of the failed trust. See G.L. 1956 §33-6-30 ("All real and personal property, not devised or bequeathed in the last will and testament of any person shall be distributed in the same manner as if the person had died intestate.").

Although appellants agree that the laws of intestacy should apply in the case of a trust's failure, they urge this Court to recognize that Art Hadley's heirs should be determined as of the date of the trust's failure. We disagree. The Court consistently has held that in the case that a testamentary trust fails, the decedent's heirs-at-law should be determined as of the date of the decedent's death. See Redmond v. Manufacturers Hanover Trust Co., 484 A.2d 906, 909 (R.I. 1984) (citing Champagne v. Fortin, 69 R.I. 10,20,30 A.2d 838, 843 (1943)).

This very issue arose in the 1943 case Champagne v. Fortin, 69 R.I. 10,20,30 A.2d 838, 843 (1943). In that case, the decedent had established a testamentary trust for the benefit of her children. Id. at 12, 30 A.2d at 839. The trust specified that upon the death of the decedent's children, the trusts were to be divided among the children of the decedent's children (the decedent's grandchildren). Id. However, all the decedent's children died childless and the trust failed to provide instructions for the trustee with respect to the distribution of the trust's corpus in the event that the trust provisions failed. Id. at 11-13 A.2d at 839. Examining the predicament that resulted form the trust's failure, this Court explained that "[i]t is manifestly impossible to restore the property to the testatrix. In such a case the parties will be put as near as may be in status quo by imposing a resulting trust for the benefit of the heirs or next of kin of the testator or for his residuary devisee or legatee." Id. at 18, 30, A.2d at 842 (citing 3 Scott on Trusts § 411).

Our determination that a resulting trust for the benefit of the decedent's heirs-at-law was appropriate did not end our analysis, however. Champagne, 69 R.I. at 18, 30, A2.d at 842. Instead, we were left to decide who qualified as the decedent's heirs-at-law. Id. we concluded,

> "[i]n our view the resulting trust, arising as it does I favor of the testatrix's heirs by operation of law, and not by reason of any intention of the testatrix to be implied from expressions in her will, can only be construed to be for the benefit of those who answer the description of heirs according to law. Heirs are those upon whom the law casts the descent immediately upon the death of the ancestor. In the eyes of the law only such are or can be heirs." Id. at 20, 30, A.2d at 842-43.

According to this Court, this general rule applies, requiring that heirs be determined at the date of the testator's death, unless the testator made it clear in the instrument that he or she intended that the heirs be determined at some other time. Id. at 20, 30, A.2d at 843.

More than forty years later, this Court reaffirmed its central holding in Champagne and in Redmond, a case involving substantially similar facts. In Redmond, 484 A.2d at 908, the decedent created a trust for the benefit of her grandchildren. Upon the death of the decedent's grandchildren the trust corpus was to be distributed to the issue of her grandchildren. Id. However, much like in Champagne and the matter now before this Court, when the last living grandchild died, there was not living issue of any of the decedent's grandchildren, nor was there a provision specifying an alternative distribution. Id. In Redmond, this court expressly followed the rule expounded in Champagne and directed that the heirs-at-law be determined based on the date of the decedent's death. Id. at 909.

We see no reason to deviate from these holdings. When the Art Hadley Testamentary Trust failed upon Sarah Hadley's death in 2002, a resulting trust arose in favor of Art Hadley's heirs-at-law. Applying the rule espoused in Champagne and reaffirmed in Redmond, Art Hadley's heirs-at-law at the time of his death were his survivors, Frances Hadley, Thomas Hadley, and Sarah Hadley. Under the laws of intestacy, one half of Art Hadley's estate should be distributed to the estate of his spouse, Frances Hadley, and the remaining is to be divided equally among the estates of his children, Thomas Hadley and Sarah Hadley.

Conclusion

For the reasons state herein, we affirm the judgment of the Superior Court. The record shall be remanded to the Superior Court. The amount set aside for the appellants pursuant to the mediation of this matter shall be distributed in accordance with the Distribution Order entered on June 6, 2007.

Justice Robinson did not participate.

Supreme Court
No. 05-204-A

Fleet National Bank, et al. :

v. :

Janet Hunt, et al. :

O R D E R

The petitions of Wylma Gay Cooley and Ronald Eliot Gay to reargue this appeal, as prayed, are denied.

Justice Robinson did not participate.

Entered as an Order of this Court this 7th day of **May 2008**.

By Order,

/s/ Jean Maggracomi
Clerk

Supreme Court
No. 05-204-A

Fleet National Bank :

v.

Janet Hunt, et al. :

O R D E R

Petitioner Ronald Eliot Gay's petition for the award of counsel fees, as, as prayed, are denied.

Justice Robinson did not participate.

Entered as an Order of this Court this **11th** day of **June 2008**.

By Order,

/s/ Jean Maggracomi
Clerk

STATE OF RHODE ISLAND AND PROVIDENCE
SUPREME COURT

FLEET NATIONAL BANK,	:	
	:	
VS.	:	CASE NUMBER:
	:	05-204-APPEAL
JANET HUNT, LUCILLE	:	SUPERIOR COURT
NO.: FOSTER, MARCIA	:	M.P. 2002-6899
HANRAHAN, AS EXECUTRIX:		
OF THE ESTATE OF SARAH:		
HADLEY AND	:	
INDIVIDUALLY,	:	
CYNTHIA GAY, ET. AL.	:	

PETITION FOR REVIEW OF JUSTICE RUBINE'S MARCH 9TH, 2005 SUPERIOR COURT BENCH ORDER, AND HIS APRIL 15TH, 2005 SUPERIOR COURT ORDER

REPLY BRIEF OF APPELLANT

RONALD ELIOT GAY, PRO SE
31 WEST CHURCH STREET
EVANSVILLE, WI. 53536
HOME: (608) 882-5576

DATED: JANUARY 10, 2008

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Appendix:

Exhibit 1: Petition to the Court to Order an Independent Audit of the Art Hadley Trusts. 83-85

Exhibit 2: Reply to the Trustee's Memorandum Opposing Ronald Eliot Gay's Petition for an Independent Audit. 86-94

TABLE OF AUTHORITIES

Note: For the most part the following authorities are either appealed to, or are examined. A few them, i.e., Tinney v. Tinney, are only used for illustrations, but by so doing they then here appear.

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Champagne v. Fortin, 69 R.I. 10, Rhode Island Supreme Court, (1943) 50, 52, 55, 58, 59, 60, 76, 77

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Blackstone, Sir William, Knight. Commentaries of the Laws of England in Four Books, (Original Publishing Unknown). Quotes are from Reprints by George Chase, (1914), and William Draper Lewis, (1897) 54-64

PETITIONS:

These petitions are not authorities, but they are appealed to by the petitioner, and they carefully document problems concerning the trustee fees, and they also touch upon the lawyer fee problems. Because they are appealed to this petitioner, the petitioner thought it appropriate to reference their use in the paper with the true authorities.

Gay, Ronald Eliot, Petition to the Rhode Island Supreme Court to Order an Independent Audit of the Art Hadley Trusts, (November 10, 2007). (Exhibit 1) 83-85

Gay, Ronald Eliot, Reply Petition in Response to the Trustee's Memorandum Opposing Ronald Eliot Gay's Petition for an Independent Audit, (November 30, 2007). (Exhibit 2) 86-94

STATEMENT OF FACTS

This petitioner, Ronald Eliot Gay, submitted his first brief on February 28, 2007. Since then there has been a lot of activity that has delayed a resolution of this issue. Not as a consequence of this petitioner's choices, but as a consequence of his sister's choice to remove herself from the settlement and then the wrangling that occurred after that event when the settling parties renegotiated their terms.

But, because of events that happened after the Superior Court order, and after the settlement occurred this petitioner filed two petitions requesting that this Honorable Rhode Island Supreme Court would conduct a fair, impartial, thorough, and independent audit of the Art Hadley trusts. The interest of these audits being the particulars of the trustee's payments to himself, which could be a breach of contract, and the repugnancy of certain disparities with the lawyer's fees. The particulars of these circumstances are briefly addressed in this brief, but they are addressed in greater detail in the two petitions that are attached to this brief as appendix entries.

This case presents many intriguing concepts that are first impression issues, and the choices of this Court are going to have great consequence for many people for years to come.

The facts of this case are by now well known by all, and there is not much more that can be said that either this petitioner or others have not already mentioned.

STATEMENT OF ISSUES

1. As to whether, or not, it was proper for the Superior Court to award Art Hadley's January 24, 1933, Testamentary Trust to the "1941" heirs as follows: One-half to the estate of Frances Hadley, one-quarter to the estate of Thomas Hadley, and one-quarter to the estate of Sarah Hadley.

2. As to whether, or not, it was proper for the Superior Court to award the Art Hadley January 15, 1936, Living Trust in equal shares to Janet Hunt and Lucille Foster.

3. As to whether, or not, this petitioner, Ronald Eliot Gay, is an 1/11th heir of Art Hadley's January 15th, 1936, Living Trust, and also of his January 24th, 1933 Testamentary Trust. (This issue is not addressed in this brief. It is well addressed in this petitioner's original brief, and in the two briefs of his sister and fellow petitioner Wylma Gay Cooley.)

The following three issues are also addressed by petitions that this petitioner has previously filed with this Court. They are attached as exhibits one and two.

4. As to whether, or not, it was appropriate for the trustee to pay himself at the time of Superior Court Order, and also at the time of the settlement.

5. As to whether, or not, the trustee's lawyer Leon Boghossian was paid a proper amount.

6. As to whether, or not, the lawyer fees are just.

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INTRODUCTION

In his final reply brief, this petitioner, Ronald Eliot Gay, again respectfully expresses his sincere appreciation to this Honorable Supreme Court of the State of Rhode Island and Providence Plantations for allowing him to present his appeal as to why it is that he claims to be a 1/11th heir of Art Hadley's Testamentary and Living Trusts, and he prays this Honorable Court to grant relief by overturning a manifest error of law as was presented by the Superior Court's Final Judgment, M.P. No. 2002-6899.

The specific issues of the Superior Court's Final Judgment that this petitioner believes to be in error are: 1) The distribution of Art Hadley's January 24th, 1933, Testamentary Trust to the so called 1941 heirs. 2) The distribution of Art Hadley's January 15th, 1936, Living Trust to Janet Hunt and Lucille Foster. 3) If the trustee paid himself fees, "Were they just?" For the order does not specify what, if any, trustee fees were allowed. And, 4) The attorney fees.

The foundational errors of law underlying the wrong judgments are primarily: 1) An improper construction and ultimate denial of Art Hadley's intentions as they appeared in his two failure clauses and elsewhere. 2) An improper interpretation and application of the rules of descendency, Rhode Island Statutes 33-1-1 and 33-6-30. 3) Denial of the second sentence of Rhode Island Statute 15-7-16 (a) by allowing persons adopted as adults to artificially enter into Art Hadley's legacy. 4) If the trustee paid himself, this payment breaches intention, and also presumes upon the Superior Court Order which made no allowance for such an event if it did happen. And, 5) an overgenerous and unjust awarding of attorney fees as allowed by Rhode Island Statute 9-14-25.

This petitioner defends his appeal hoping to not, "deprive this Court of the great aid which so often comes

from the earnest, able advocacy of adversary views",[12] by examining and setting in proper context a comparison of this present case to: 1) the case law precedents, 2) the law, and 3) Art Hadley's intentions. This then should aid this Court in its mission to fulfill Fleet National Bank's specific request for, "...an order of this Court construing said Trusts and setting forth the proper distribution..."[13]

I. BRIEF OVERVIEW:

To aid understanding, the following overview is presented:

The jurisdiction of the two failure clauses is over both trusts because their jurisdiction is over the entire "*personal estate of the settlor.*" The present circumstances make the first failure clause operative, while the second is not. Art Hadley's first failure clause clearly reveals that his second choice of heirs is to be identified by the laws of intestacy when his legatees fail to be, as if "*he had then died intestate.*" By hypothetically placing himself into the time of the failure of his legatees, he clearly demonstrates three intentions, First, he is the person through whom the heirs-at-law are to be determined, not his legatees. Secondly, the time of determination is when his legatees fail to vest because they failed to be, and not at the time of his death. And, thirdly, his estate is to stay in his whole blood. This choice then guarantees that his estate will directly ascend to the first purchaser through him alone, and not through his intended legatees, or any others. This choice keeps his inheritance in his whole blood thereby eliminating any claims of the 1941 heirs. This choice "***always***" creates an ascending search for heirs thereby creating a second elimination of all non-issue, the first elimination being the fact that original intention has already eliminated non-issue. And, since this choice

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[12] Partial quote of Justice Condon's comments concerning his view of the Washington Trust Company case in his decision of Champagne v. Fortin, R.I. 1943, 69 R.I. 10, 30 A.2d 838.

[13] Quote: Fleet's Second Amended Verified Petition for Construction of Trust and Order of Distribution.

appeals to the laws of Rhode Island, the law also excludes those who were artificially introduced into Art Hadley's legacy by adult adoption after his death. The true heirs-at-law are then determined to be the lineal descendants of Art's parents Thomas and Maria Art Hadley. Those lineal descendants being the grandchildren of Una Hadley Gay who is Art Hadley's whole blood sister.

II. ARGUMENTS AGAINST THE SUPERIOR COURT'S AWARDS OF ART HADLEY'S TESTAMENTARY AND LIVING TRUSTS:

The challenge of this case is to have a proper view of it. In one look it seems that the first determination is when and how are the heirs to be chosen, and whether, or not these are construction cases. In another look it seems that this case can easily be determined by a proper application of the purpose and method of the laws of intestacy, and how it is that Art Hadley intended that they here apply. In either case, the testator's intentions, and the law clearly support this petitioner. This Court's challenge is to correctly organize all of the supporting issues into a correct perspective, and the three keys to that are a correct understanding of, and a proper blending of the laws of intestacy, testator intention and "*proper context*", "*proper context*", and "*proper context.*"

It must cause some concern when petitioners appear before this Honorable Supreme Court with positions that are different from the ones that they argued before the Superior Court. One of Mr. Harpootian's changes is that he originally argued for the Testamentary Trust, for one of the same reasons as this petitioner, chiefly, that the failure clause applies. Mr. Pharr's position has changed radically. His clients, this petitioner's sisters and cousins, had the same position as this petitioner in the Superior Court. After losing, they, with this petitioner, believing themselves to be grieved, petitioned to, and received from this Honorable Supreme Court a new hearing, and now here they are arguing for the lower court ruling that they appealed. Have they, "seen the light" or is it something

else? Simply, they need this petitioner to lose so that they can receive more money. Had the settlement failed they would now be arguing for the same outcome as this petitioner. In contrast, this petitioner has the same arguments for the same reasons that he ever had. Does truth ever change?

Throughout this case its abstract concepts have been difficult to comprehend and explain, because these trusts have been divided and presented in improper context. Because the various pro and con arguments are so intricately interwoven, it is difficult to clearly separate all issues into separate discussions. Consequently, this petitioner has decided to present a philosophical discussion with applications to various issues made as they appropriately appear. Since Art Hadley's two trusts have created one "*personal estate of the settlor,*"[14] the correct solution is to treat both as one.

A. Sir William Blackstone, Knight, as an Authority.

Many case law citations are actually quotations of Sir William Blackstone. For instance, in the 1943 case of Champagne verses Fortin this Honorable Supreme Court in its justification of its decision to award to people who were both completely unrelated to the whole blood, and outside of the testatrix's intention, noted that "*Heirs are those upon whom the law casts the descent immediately upon the death of the ancestor. In the eyes of the law only such are or can be heirs.*"[15] This is a quote from Sir William Blackstone where he noted in his discussion of "Of Title by Descent" that "*An heir, therefore, is he upon whom the law casts the estate immediately on the death of the ancestor:*

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[14] This quote is from the first failure clause, which is in the second written trust. This petitioner believes that this statement clearly demonstrates that Art Hadley is here demonstrating by a very deliberate choice of words that there is only one "*personal estate of the settlor,*" and consequently for this and other reasons, both trusts are to be treated as one entity for distribution to his second choice heirs.

[15] 69 R.I. 10, Champagne v. Fortin, Rhode Island Supreme Court, February 27, 1943. Page 7.

and an estate, so descending to the heir, is in law called the inheritance."[16] It is an unquestioned fact that Sir William Blackstone, was, and, still is, one of the world's premier law authorities. He, in his writings, carefully noted the natural origins,[17] history, applications, reasons, and solutions to any application problems of the laws of his times. He meticulously researched England's Common and Civil laws, said laws being foundational to, and essentially conversant with, the American laws. The Rhode Island intestacy laws, of which this Honorable Court are presently seeking to correctly apply are directly from the tradition of law of which Sir William Blackstone so carefully explained. Consequently, his advice and insight is here sought.

Sir William Blackstone made significant contributions to this present case in three of his presentations. First, in "Of the Nature of Laws in General," he discusses the "interpretation of laws."[18] The second is "Of Title by Descent," in which he discuss the rules of descendency.[19] And, in the third, "Of Title by Testament and Administration," he discusses lapsed legacies.[20]

1. Sir William Blackstone: "Of the Nature of Laws in General."

Sir William Blackstone recognized that "*since in laws all cases cannot be foreseen or expressed,*" and that "*by reason of the universality*" of the laws, that they are

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[16] Sir William Blackstone, Knight, Commentaries on The Laws of England, George Chase, 1938, page 376.

[17] Blackstone recognized that all just laws arise from the laws of the universe, said laws being directly designed, instituted, and revealed by God. Our charter document the "Declaration of Independence" recognizes the same fact when it declares that our "*endued ...unalienable rights*" come from God. Courts of equity which are essential "*to secure these rights*" have received their authority "*from the consent of the governed,*" and they have a very important responsibility indeed.

[18] Sir William Blackstone, Knight, Commentaries on the Laws of England, William Draper Lewis, 1897, pages 27 -53.

[19] Chase, pages 375 - 399.

[20] Chase, pages 589 - 625.

sometimes "*deficient*," and that there is then a need for "*equity*," "*a correction of that wherein the law (...) is deficient.*" Consequently, "*there should somewhere be a power vested of defining those circumstances, which (had they been foreseen) the legislator himself would have expressed.*"[21] This Court's mission then being to construct the Art Hadley Trusts and to interpret and apply (as the Legislature originally intended) the laws to the following concerns: 1) What did Art Hadley intend? 2) When are the heirs to be determined? 3) Must heirs be of the whole blood? and, 4) Are Janet Hunt and Lucille Foster explicitly forbidden from inheriting?

Sir William Blackstone carefully detailed the process to be followed to determine equity. "*The fairest and most rational method to interpret the will of the legislature is by exploring his intentions at the time when the law was made, by signs the most natural and probable. And these signs are either the words, the context, the subject matter, the effects and consequences, or the spirit and reason of the law.*"[22] If the word "*legislature*" is replaced with "*testator*", and if the word "*law*" is replaced with "*will*", this would now be the method to determine testator intent. This petitioner will now address the "*spirit and reason*" of the law as it relates to the following considerations.

a. Rhode Island Statute 33-1-1: This statute has an evident spirit and reason, as demonstrated by the possibilities of its language, that the heirs-at-law are to be of the "*whole blood.*" "*Whole blood*" language, (children, parents, brothers, sisters, descendants) demonstrates a legislative intention to keep intestate successions in the original and natural blood family. If such an emphasis is so placed on behalf of one who dies intestate, how much more diligence to this end should one who died testate receive? The Superior Court diligently searched for every possible reason as to why the succession should not be to whole blood, rather than searching for reasons to keep it there. *Is*

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[21] Chase, page 52.

[22] Chase, page 49.

anyone surprised that when the dust finally settled on the Superior Court's ruling that the whole blood heirs-at-law were the "only" ones who did not receive a portion of the inheritance? Blackstone also carefully noted that heirs are to be of the whole blood in his study of "Of the Rules of Descent." This petitioner's opponents emphatically make it an issue that this Court is to "ENFORCE!" the laws of intestacy. When one asks, "What exactly are the laws of intestacy?", the obvious answer is that they are merely a method of descent or ascent. They demand nothing other than a method that is obviously designed to keep inheritances in the whole blood. This petitioner respectfully prays this Honorable Court to enforce the rules of intestacy, said rules evident purpose, as Blackstone also attested, being to keep the inheritance in the natural family of the whole blood.

b. Rhode Island Statute 15-7-16 (a): The obvious spirit and reason behind this statute is to ensure that the law fully protects the inheritance rights of "all" children who are adopted as minors, and to also give a gracious extension of most of that protection to people who are adopted as adults. However, this statute also has contained within its spirit and reason a favorable intention that protects testators, (and, consequently, their legitimate heirs), and, secondly, a definite contrary intention against those "adult" children who have been artificially introduced into legacies by adult adoption. This protects all testators who for whatever reason completely failed to reveal "any" testamentary intentions concerning adult adoptees. Simply stated, if the testator did not specifically included adult adoptees, the legislature has then decisively and categorically excluded them.

Consideration must be given to the Legislator's intended meaning, (*spirit and reason*), of "*in the construction of any instrument.*" There are two possibilities. First, is Mr. Harpootian's erroneous position that adult adoptees are only excluded "if" the testator's will needs to be constructed, but in all other wills they are not.

The practical consequence, (*effects and consequences*), of this position is that all testators who left instruments that need no construction, (if there are such), have left legacies that can be joined at will by any adult who can find a way to be adopted into it. To so choose, and to so rule is to invite a treasure hunt for legacies, and the litigations that are sure to follow. Does anyone believe that the vast majority of testators who could have adults introduced into their legacies would have so intended? Tinney vs. Tinney demonstrates that there are adults who will make unnatural choices to join into another family's legacy. It is noted that Kevin "Tinney" unnaturally had "two" simultaneously living mothers, and his real mother was seriously objecting, and look at all the trouble that came to her and the real Tinney family.

The second and correct possibility is that the Legislature intended (*exploring his intentions*) to exclude "all" adult adoptees from joining any legacy after the legator died unless the legacy specifically includes them. If this concept were to be impartially, instituted, how else could it have been so done? Another consequence of supporting Mr. Harpootian's erroneous position is this, if the Court awards the Living Trust to Janet Hunt and Lucille Foster, testators and estate planning attorneys will get the message, and begin to change how trusts are worded, but those changes will not show up in court for another fifty years. The courts will then continue to wrestle with these types of cases for the next fifty plus years because these legacies already exist, and their legators are already deceased. This petitioner's position has the better support in reason and natural justice.

Mr. Harpootian, when addressing the mandated exclusion of Rhode Island Statute 15-7-16 (a), attempts to dismiss it, by claiming that the Living Trust is not being construed. Again, if this trust is not being constructed, then what exactly is being done to it? Also, it is important to note that Mr. Harpootian seriously misquotes the second sentence of 15-7-16 (a) by irresponsibly replacing "*and who*

is adopted after the death of the maker of the instrument." with "*unless a contrary intention shall appear by the terms of the instrument.*"[23] His analysis lacks proper context.

c. Rhode Island Statute 33-6-30: The Rhode Island Statute for Partial Intestacy, 33-6-30 states, "*All real and personal property, not devised or bequeathed in the last will and testament of any person shall be distributed as if the person had died intestate.*" From this statute one clearly understands that this law's jurisdiction is that it deals with partial intestacy issues with wills and testaments at the time of death. First of all, wills and testaments are not legacies or trusts. And, secondly, they are instruments that are quickly resolved at the time of death, not decades after the fact. It must be noted that Art Hadley's present Testamentary Trust was brought into existence by his last will and testament. When he die, his last will and testament was quickly and completely resolved and there were "no" intestacy issues. Its resolution was the paying of his identified just debts, the giving of identified properties and gifts to his wife and Charles Tost, and the appropriation of everything else[24] to create his Testamentary Trust. As mentioned, at his death there were absolutely no intestacy issues with his last will and testament. A demand that this law that was not designed for trust resolution issues, is to be here strictly applied is a demand for injustice. Rhode Island Statute 33-6-30 does not state, nor does it insinuate that it applies to legacies or trusts that have conflicts over the construction of a testator's intentions as to whom his instructions to bequeath apply years after his death!

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[23] Mr. Harpootian's brief, page 10.

[24] Art Hadley's Living Trust became Testamentary upon his death. The Testamentary Trust instructions instruct that everything, including those over which he had testamentary control were to be made into and to be considered as being "one trust estate." In that the Living Trust was already an existing entity with its own final codicil instructions that were essentially identical to the Testamentary Trust codicil, it simply became a definable component part of the ordered single trust estate.

In the present case everything "was" bequeathed in the trusts at the time of death. This concept is radically different from the ones presented in Rhode Island Statutes 33-1-1, and 33-6-30 where the emphasis is upon not being "bequeathed at the time of death."

2. Sir William Blackstone: "Of Title by Descent."

Sir William Blackstone, in his discussion of "Of Title by Descent," carefully listed and explained seven rules of descent. As mentioned, the most obvious and overriding intention of all of these rules was to "keep" the inheritance in the whole blood, and these rules are completely designed to that end. It has already been noted that in Champagne verses Fortin this Honorable Court quoted Blackstone when it justified its award. This petitioner believes that this Court here erred in five respects, and this award clearly troubled this Court, and the Court essentially apologized.[25]

a. The five errors of Champagne v. Fortin:

First, it improperly borrowed Sir Blackstone's quote of who could be heirs totally void of context. Sir Blackstone clearly demonstrated that those "*heirs upon whom the law immediately cast the descendency upon the death of the ancestor*" were to be heirs of the whole blood.

The second error is that this Honorable Court failed to enforce the one testatrix intention that it did clearly recognize. For some reason this Honorable Court either did not consider, or did not believe that the solution could have elements of both remedies of the law and testator intention. Once the Court believed that the solution was "only" in an impartial resulting trust, it then accepted the outcome even though people inherited who, by the evident design of the testatrix, were not supposed to inherit. On a technicality,

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[25] Champagne v. Fortin, page 6. "Yet it is obvious that she did not intend to convey to the trustee any beneficial interest in her residuary estate. It is manifestly impossible to restore the property to the testatrix."

the testatrix's intention was denied. Denial of intention should never happen.[26]

The third error was that this Honorable Court did not recognize this "failed" trust for what it truly was, that being a "lapsed legacy." Sir William Blackstone demonstrated how the rules of intestate descendency apply to lapsed legacies, and this Court, for whatever reason, did not treat this trust as a lapsed legacy. An important point is to be noted that Blackstone considered that lapsed legacies are, because of their design, "*solvendum in futuro.*"[27] The argument as to when heirs are to be assigned continues, but one thing is certain Blackstone believed that heirs are assigned when the legatees fail to vest.

The fourth error was that this Honorable Court analyzed from an acceptance of the idea that reasons gleaned from other cases created the necessary foundation and solution of law from which to decide this case. Thereby, avoiding any comparisons and analyses of the individual issues of this case to the original laws, and their original "*spirit and reason.*"

An additional insight of how to keep the "*spirit and reason*" of the law is to be gained by considering the "*effects and consequences.*" This Court's fifth error was that by overlooking "*effects and consequences*", its ruling was tragically outside of the testator's recognizable intention, and the "*spirit and reason*" of the law when it awarded to non-blood heirs. This petitioner, with an apology for his directness, respectfully submits that this Honorable Court erred with Champagne v. Fortin.

3. Sir William Blackstone: "Of Title by Testament and Administration."

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[26] In Powers v. Powers, 75 R.I. 461, a nephew expressly excluded inherited by descent. The statute of descent was resorted to by law, but the nephew who then was in the descendency should still have been excluded by intention.

[27] Chase, pages 609 - 611: Explanations of Blackstone's explanations of legacies are from these pages.

Without question, Sir William Blackstone's overriding purpose in his treatise of "Of Title by Testament and Administration" was to demonstrate the importance of testator intention and the means to that end. Said importance being foundational in the resolution of uncountable construction cases. As a brief comment, this petitioner believes, and has noted in his first brief that the obvious intentions of Art Hadley have been manifestly overlooked in the Superior Court, unless they could be construed in some way to mean that his intention was to forfeit his intentions.

A "failed" trust is nothing more or less than a lapsed legacy. There is a substantial difference between the concepts of a "failed trust", and a "lapsed legacy." The idea conveyed by the term "lapsed" is that although the purpose failed the legacy did not. The legacy still exists. How similar to the present case where the trusts still exist. Sir William Blackstone addressed this "lapsed legacy" issue in its different circumstances, and he clearly demonstrated how the rules of descendency apply. Blackstone noted that legacies are *solvendum in futuro.* Simply stated, the legacy has by the testator's design been placed into the future, and, consequently, the time to determine who the heirs are is at the moment of vesting when the legacy fails because the legatees failed to be. Blackstone demonstrated that the fact of the existence of a legacy is sufficient poof in, and, of itself to demonstrate that the testator intended that the heirs-at-law are to be determined when his legacy fails, not when he died. He also demonstrated that the heirs are to be determined from the class to whom the legator willed his legacy. Without an express statement in the will expressing otherwise, a court must accept that the heirs-at-law are determined when the legacy fails. This concept is not so different from the reasoning in Champagne v. Fortin. In that case, the essential reasoning was that the legacy had been given to a class, and since the class failed to be the, trust reverts from the class back to the trust maker. The Court chose to work back from the legatees with a

constructed trust, rather than to work back according to the rules of descendency. Had the Court chosen to use the rules of descendency as they should have so done the result would have been different. One of the difficult and troubling challenges to resolve in this, and in other cases such as Champagne v. Fortin is how to logically arrive at a solution for the obvious when so many clever and convincing contrary arguments abound. The obvious end result being that the blood heirs should receive. This petitioner will here present, and explain Blackstone's solution in an appropriate context.

4. A Lapsed Legacy as Explained by the Principles of William Blackstone.

The following discussion explores what should happen if there were no failure clauses. Should it ever be found that the jurisdiction of the first failure clause does not apply to the Testamentary Trust this following discussion then becomes applicable. This discussion includes appropriate testator intentions, and other exclusions of law, and it is also presented with a mind to Rhode Island law in all instances where it either affirms, or contradicts Blackstone's analysis.

Art Hadley left a legacy with vesting requirements to a class of people who failed to be. Howbeit, it is possible that this class did not fail to be in origin, for, had it ever happened that either Thomas or Sarah lost a child by miscarriage, or death at birth this class would have briefly been. But, in any case, since this class has failed to be at the time of vesting, and the money was by will put into the future for this class, this class is still to receive its legacy, making the time of the lapse of this legacy to be the time that this class failed to be available to receive its inheritance at the appointed time. The event of vesting being that the members of this class that inherit must be alive at the time of the death of the last to die of either Thomas or Sarah. When the vesting occurs, and the class of people are not, the gift is to then go to their heirs.

Lest one thinks this example to be odd, this question is asked, "To whom would the Court award a similar case if the Testator had willed his legacy to the grandchildren of his best friend upon the death of the last of his best friend's children, and that class of people failed to be?" The Court would most likely award the gift to the heirs-at-law of his best friends non-existent grandchildren, because the testator had made a clear, definite, and unmistakable choice to remove his inheritance from his bloodline, and to then assign it to the bloodline of his best friend.

Back to the example, the question then is, "Who at the time of vesting are the heirs-at-law of Thomas Hadley's and Sarah Hadley's non-existent children?" Here then, is the answer for both classes of non-existent heirs according to the rules of descent as explained by Sir William Blackstone, as also affected by Rhode Island Law, and the intentions of Art Hadley.[28]

First to be considered are the heirs-at-law of Thomas Hadley's non-existing children. Since they are not being at the time of vesting and have no continuing issue, their legacy will revert to their parents Thomas and Betty Hadley equally.[29] Since Thomas is dead, and Betty is alive the estate would then fully go to Betty, but because this is a legacy created by a will for whole blood issue, Art Hadley's specifically declared intention that his estate was to descend to "*issue or remote issue*" is still operative. So, Betty, being in the descending line, is then precluded from

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[28] The natural consequence of testaments is that they will have deficiencies because no one can address all future possibilities. When courts construct testaments to solve problems, their first priority when bringing the law into play is to honor any and all recognizable testator intentions. ***The choice does not have to be either the law, or the will.*** If a testator, in the past, failed to address a particular circumstance of the present, he has not made a choice to forfeit his intentions. The courts choice can and should be a blending of both intentions and the law, with the strongest consequences being assigned to the testator's intentions.

[29] Rhode Island Statute 33-1-1: "...to the parents in equal shares, or to the surviving parent ..."

inheriting because she is not issue,[30] and neither can her daughters Lucille and Janet inherit through her because, even though they are of the half blood of the non-existent heirs, they contain no blood of Art Hadley. Consequently, they then face a contrary intention from Art Hadley because they are not his issue. And, also, in addition to Art Hadley's contrary intention, Janet and Lucille are categorically excluded from inheriting because Rhode Island Law protects testators from giving legacies to adult adoptees who were adopted after the testator's death. Neither can one half of the estate ascend through Betty Hadley for three reasons. First, since the estate has descended through her husband, it then must also ascend through him. And, secondly, males are preferred over females, and so for also this reason the estate then ascends through Thomas. And, thirdly, to the original pattern estates do not divide in ascendancy, they unite. Howbeit, Rhode Island Statute 33-1-2 directs otherwise, but the testator's intentions override. This estate must ascend because a forbidden heir cannot inherit.

This ascendancy then returns the estate to Thomas' mother and father, Art and Francis Hadley, who are both deceased and they have no other continuing issue. The estate will now ascend through Art Hadley for two reasons. The first reason being that since Art Hadley is the giver of the estate, and not his wife Francis, and the estate is to stay in the whole blood, it will now ascend to Art's father and mother, Thomas and Maria Art Hadley. The second reason being that males are first preferred, unless the estate has descended through the mother. The estate is now able to realize a whole blood first purchaser because Art's father and mother have a continuing descendency through their daughter Una Hadley Gay, who is Art's

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[30] There is a seeming conflict between the law and testator intention, intention bypassed Betty in descedency, but the law has brought the estate back to her in ascendancy. The law is the servant of intention, and is to never defeat it. Since, intention precludes Betty, the law then cannot include her.

whole blood sister. However, she along with her three children are deceased, but her eleven grandchildren live. The portion of the estate given to Thomas' non-existing children now passes to Una Hadley Gay's eleven grandchildren in equal shares.

This petitioner will now examine that portion of the estate that was left as a legacy to Sarah Hadley's children. Sarah Hadley was apparently married two times. Her first husband died in 1949. This petitioner has no knowledge of what happened to her second husband. However, she then presents to the legacy children who are both of the whole blood of Art Hadley, and are of the half blood to each other. These children were not being at the time of vesting, and since they have no continuing issue the estate then passes to the two families of Sarah Hadley and her two husbands. The case being the same for both families that since the estate passed to Sarah's non-existent children through her it then must also ascend through her, for even though males are first preferred, females are preferred if the estate has descended through them. Sarah's two husbands are then excluded from the ascendancy. The estate now ascends through Sarah to her parents, Art and Francis Hadley where her portion of the estate unites with Thomas' portion. At this step the inheritance passes to whole blood heirs as it did for her brother Thomas.

This petitioner has demonstrated that he is a 1/11th heir of both trusts by a fair and honest application of the rules of descendency. Fully respecting the statutes of Rhode Island, while also fully respecting the advice of Sir William Blackstone, and the intentions of Art Hadley. This fact being so without considering the existence of any failure clauses.

B. Failure Clause Issues:

The answer to the question, "*When are the heirs-at-law to be determined?*", clearly lies within the trust maker's intentions, subordinate to that, the answer is to be found in an understanding in proper context of the law and various court decisions.

1. The Nature and Importance of Testator Intention:

The nature and importance of testator intention must be briefly discussed. "The Declaration of Independence", clearly establishes the fact that American law is foundationally anchored upon the "*laws of nature, and nature's God*". For example: "*We hold these truths to be self-evident, that all men are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness ...*" This concept of unalienable rights is imprinted, by God, into the human conscience. It is not negotiable, it is not a gift of government, it has not been created by legislative action, and it is certainly not in existence as a consequence of case law precedents. The words, "*that among these*" clearly demonstrates that there are also other "*unalienable rights*", one of these being the right of property ownership, and with this right is the right to pass our property on to whom we choose.

The original approach to law was to try each case individually to the actual law. It is only in recent history with the introduction of the evolutionary concept of sociological jurisprudence, and the resulting emphasis upon the idea that case decisions make law, that an emphasis has been placed upon searching for previous decisions to find the answer for the next one.[31] By not returning each case to the original standards for decisions, the judiciary is creating a hydra, and decisions are wandering all over the map. Unfortunately with this hydra, there has been a loss of respect of the principle, that the judiciary has a responsibility from the people, and to the people to judge its cases respecting first the "*unalienable rights*", as our Declaration so aptly describes: "*That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, ...*" This presented discussion is foundational for the following

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[31] John A. Stormer, Betrayed by the Bench, (Florissant, Missouri: Liberty Bell Press, 2005), pages 64 - 65.

observation. **Testator intention arises from the "*unalienable rights*", the testator has this right because God gave it to him, not government.** Every court must be careful in its decisions because intention overrules law, unless the intention contradicts itself, contains immoral concepts, and/or is fundamentally illegal.

Because testator intentions have arisen from the "*unalienable rights*", courts then, should deal with them as declarations. Consequently, every solution to a difficult construction case should have incorporated within it a fulfillment of "*all*" recognizable intentions. Inheritance laws and resulting case decisions can not answer all of the possible scenarios because of the universality of the laws, of the wills, and the unforeseeable circumstances of history. When determining equity, courts need to be very careful with the sterile and unfeeling application of case law precedents that may do great damage to a testator's recognizable intentions, thereby creating a manifest error of law.

2. Art Hadley's Two Trusts Comprise just "*One Personal Estate of the Settlor.*"

For the most part, the answer as to when heirs are to be chosen is a construction issue. Central to a good answer is a proper contextual view of the relationship of these trusts to themselves, and to Art Hadley's intentions. Contrary to this petitioner's view is the view that Art Hadley intended to create two separately functioning non-related entities with different distribution plans. That is how the Superior Court addressed them. This petitioner's view is that Art Hadley intended to create a single estate with a single distribution plan. By definition, a single estate would have the same distribution plan, with then, the same date and method by which to determine when heirs-at-law are to be chosen. There are many reasons to support this petitioner's understanding, including: same owner, same author, same distribution plans, numerous references in both trusts to the "*trust estate*", Testamentary Trust intention to create one trust estate,

and the first failure clause's jurisdiction over "*the* (entire) *personal estate of the settlor.*"

There is a practical answer as to, "Why did Art Hadley create a single estate that is defined by two instruments?" The answer is simple, he practically organized his legacy so that it would work for him with his changing life circumstances, primarily his seriously deteriorating health which was most likely a consequence of his wounds from World War I. He first created a "last will and testament" for everything, which specifically included his Hadley Company, Limited. Later he converted his shares of the Hadley Company, Limited, into his Living Trust for his present purposes. At this time he instituted a failure clause that would apply to his "*personal estate.*" Although he gave his Living Trust Testamentary provisions, he never identifies it as a "last will and testament." Consequently, the Living Trust is then gathered into his "last will and testament" by its explicit command to gather "all" of his possessions whatever and wherever they are to become his one "*said trust estate.*"[32] By design, his Living Trust continued to serve its purpose without interruption during the time of his death, and the probating of his last will and testament, thereby assuring continuing income for his family. Since the Living Trust was also already organized he apparently decided to let it remain organized, after his death, as it was. Simple and effective!

As mentioned, the key is "context." Time considerations are necessary. Art Hadley's first written trust, the Testamentary Trust, became a legal entity on the 24th of January, 1933. It was originally designed to capture all of Art Hadley's described properties upon his death, including The Hadley Company, Limited,[33] and to create of those properties a trust to benefit, his mother, his wife, and

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[32] Art Hadley's Testamentary Trust, January 24, 1933. His "*last will and testament.*" Article Fourth.

[33] The Living Trust was created from Art Hadley's in England company "The Hadley Company, Limited."

his two children. This first written trust also contains explicit language indicating that everything that is captured is to be made into one trust estate. It is important to note that this instruction that everything is to be made into "one" trust estate is never rescinded in any of his codicils, nor in his later written Living Trust of January 15th, 1936. The significance of this is that this trust although first written, did not become operative until Art Hadley died, then placing its effect not only before the Living Trust, but also after the Living Trust. The first written Testamentary Trust had no failure clause, but in some respects a failure clause was not important because a successful termination of this trust, as originally written, did not rely upon continuing issue. The principle belonged to his children, and possible other issue, upon two conditions: First, the death of their mother, and, secondly, the attainment of age of twenty-five. If Art Hadley had not changed his two trusts with his December 9th, 1940, codicils, Thomas and Sarah would have fully inherited in 1968 when their mother Francis Hadley died. By the failure clause's instructions, had Thomas and Sarah predeceased their mother the inheritance would have been awarded to Una Hadley Gay's family when Francis Hadley died. This is what Art Hadley clearly intended.

When Art Hadley implemented his original Living Trust he designed it with the exact same beneficiary plan as his Testamentary Trust, with one exception, his mother is not included, she is obviously dead. His children only needed to survive their mother and reach the age of twenty-five to inherit the principle, and like the Testamentary Trust there was no need for continuing issue.[34] But, unlike the Testamentary Trust, Art Hadley in his original edition of his Living Trust implemented "***two***" failure clauses. It

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[34] It must be noted that although continuing issue was not necessary for a distribution, the hoped for possibility of continuing issue had been recognized, and that recognition is specifically referring to "biological" issue. This fact then becomes a contrary intention for Janet Hunt and Lucille Foster.

must be noted that the two failure clauses, which were written almost five years prior to the final codicil, demonstrate that Art Hadley had no intention of ever being intestate. Both of his failure clauses bequeath his property, and this, by definition, is "testacy." To this petitioner's knowledge none of the other briefs even hint at the existence of the second failure clause. But, the point to be made is this - these two failure clauses were originally designed to deal with failure issues as they could have then occurred, and at this time there were no requirements for continuing issue. The original failure clause was not originally designed with an intention to resolve continuing issue disputes, whether adopted, or not.

3. The Use of the Failure Clause Affirms "Construction."

However, this failure clause applies to the present dispute because it clearly shows Art Hadley's intentions in at least two respects. One being his desire to use the Rules of Descent as his method to choose heirs if ever necessary, and the other being his desire to identify his heirs-at-law at the time of the death of the last of his children. But, because the December 9th, 1940 codicil so radically changed the first failure clause's context,[35] its application can "***only***" be understood and implemented by a Court's "construction." Construction is a concept that Mr. Harpootian carefully skirts in his brief by an attempted brush off.[36] [37] He carefully avoids any in depth contextual analysis of this issue, because he knows that his clients can not inherit the Living Trust if it can ever be demonstrated that this present case is a construction issue. The sad fact is this. ***The very moment that he claims that this***

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[35] This petitioner's first brief addresses these issues throughout, but special analysis is on pages 9 - 32.

[36] Mr. Harpootian's brief, pages 10 - 11.

[37] Mr. Harpootian carefully avoids the "C" word (construction). In his facts and travel, and brief he mentions that the bank was seeking "instructions", this is true however the actual word used by the bank was "*construe.*"

first failure clause applies, which he has, he is relying upon a construction, because the failure clause cannot apply unless it is constructed! It must also be noted that any affirmation of the applicability of the first failure clause, is an affirmation that the time to determine the heirs-at-law is at the time of Sarah's death. This is at least true for the Living Trust.

This petitioner respectfully asks of this Court, if determining the sense and meaning of this context modified single sentence is not a construction, then what is it? If it is to be found that this is not a construction case in which an instrument has the intentions of the trust maker interpreted and applied, this petitioner then submits that this will be the first time in history that a court has constructed a non-construction case! Absent from Mr. Harpootian's brief are any citations of cases where a court determined that a case before it was not a construction case.

Mr. Harpootian addresses the first failure clause when he mentions that the trust is "*frustrated*",[38] because both Thomas and Sarah have deceased without "*natural born children,*" he then makes an incredible statement, "*But, reading further on in the Art Hadley Living Trust, we find clear, concise and unequivocal directions as to what to do next.*"[39] The only way in which his "*But, reading further on*" statement could possibly be true would be if he had read the trust "backwards!" Again, the failure clause ***precedes*** the final codicil by almost five complete years, and in its original un-constructed context it does not in "*clear, concise, and unequivocal directions*" direct as what to do next, because continuing issue was not an issue. It does direct by demonstrating intention, but to say it unequivocally directs is to "construct."

Returning to the idea that there is one trust estate, it must again be noted that the second written Living Trust,

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[38] "Frustrated" is not the same as "failed" which is the presented concept in earlier briefs.

[39] Mr. Harpootian's brief, pages 6 - 7.

written by the same author, utilizing identical distribution schemes in all instances, also presents the concept of there being one "trust estate", in fact, the failure clause, to which all seem to be appealing to some degree, also has in it several times the concept of a single "trust estate." The first failure clause also contains another concept that needs to be discussed, and that is the mention of "***the personal estate of the settlor***." It must be asked, "Does Art Hadley have two separate "trust estates", and is there more than one "***personal estate of the settlor***?" Obviously not! The only conclusion is that the settlor intended by the design of this failure clause, that it should also apply to his earlier written Testamentary Trust. It must also be noted that other courts have considered the one estate multiple document issue, and they have concluded that even though there may be several documents that identify properties in an estate, their can only be one will, and the separate properties are still to be considered as being one integral estate. The point is this, both obvious intentions and case history affirm that this is one estate, and, consequently, there is then one distribution plan with only one date to determine heirs. This is contrary to Judge Rubine's decision. In that this failure clause has an apparent jurisdiction over the "*personal estate of the settlor*" one can only conclude that it then applies to the Testamentary Trust, which then would set the date to determine heirs for that trust at the time that Sarah died. We see then that the use of the failure clause is a construction, this fact alone then disallows Janet Hunt and Lucille Foster, and we then see that the date to determine heirs disallows the 1941 heirs.

4. Examples of Multiple Documents being Construed as Comprising One Will:

It must be noted that there are cases where courts have dealt with multiple document wills, and they have decided that the multiple documents are to be essentially treated together as one. Following are brief and appropriate citations from a few cases, with an appropriate

comment or insight from each. These are old cases, but the Westlaw search did not bring up any newer cases.

1) 54 Barb. 274, case of Foreman, Supreme Court, New York County, New York, June 7, 1869.

> *"The general rule is that two or more written instruments, executed at the same time, relating to the same subject matter, by the same party, or between the same parties, should be construed together, and viewed as one instrument. Two written instruments,..., may, notwithstanding their repugnancy in certain particulars, or in certain respects, constitute a will, or the will of such person, and legally and properly be admitted to probate as such."* Page 1.

Mrs. Foreman had written two different wills on the same day. Each attested to by different witnesses. Her separate wills where challenged in many ways. One being her sanity. The Court construed that the two together were one.

2) 24 S.E. 342. Gordon v. Whitlock, Supreme Court of Appeals of Virginia, March 26, 1896.

> *"The law applicable to this class of cases is well expressed in Mr. Justice William's book on Executors (7th Ed., 162) where he says: 'The mere fact of making a subsequent testamentary paper does not work a total revocation of a prior one unless the latter expressly or in effect revokes the former, or the two be incapable of standing together; for, though it be a maxim, as Swineburne says,* ***that no man can die with two testaments, yet any number of instruments, whatever be their relative date, or in whatever form they may be, so as they are all clearly testamentary, may be admitted to probate as together***

constituting the last will of the deceased. *And, if a subsequent testamentary paper be partly inconsistent with one of an earlier date, then such latter instrument will revoke the former as to the parts only which are inconsistent.'"* Page 3.

Mr. Charles Whitlock had made two separate wills and three codicils. The Court rejected his third codicil because he was then insane. Of interest, is that this Justice notes "no man can die with two testaments, yet with any number of instruments." This is a very important concept for Art Hadley's situation. **It is true a person can only leave one testament no matter how it is presented.**

3) 50 Sickels 145. Crossman v. Crossman, Court of Appeals of New York, February 26, 1884.

"It seems that if two testamentary instruments are executed at the same time, containing different provisions, they constitute, taken together, the will of the testator, and both must be proved and admitted to probate." Page 1.

Mr. Crossman had made two almost identical copies of his will. The Justice's comment actually states the issue more dramatically than it here needed to be stated. His statement though does address the issue that more than one document can only represent the one will of the testator.

5. Examples that Vesting is to Occur at the End of a Legacy:

1) 200 A. 455. Industrial Trust Company v. Wilson, Rhode Island Supreme Court, July 11, 1938.

"The established rule is that the use in a will of the word 'surviving' , or of an expression akin to it to describe a class who are to take after an intervening life estate, refers to the termination of such life estate and not to the death of the testator. The employment of such words or words under such circumstances

shows clearly that the testator intended to postpone the vesting of the gift over to the time when the life estate would end." Page 475.

This case is different from the present in that the legatees were, but the justice does make the point that the testator's intentions was that the termination was when his estate ends, not when he dies.

2) 204 A.2d. 310, Rhode Island National Bank v. Clark, Rhode Island Supreme Court, Nov. 4, 1964

> *"It is well settled that when a gift is made to a class following an intervening life estate in a third person, membership in the class determines as of the expiration of the preceding life estate."*
>
> *"The employment of such a word or words under such circumstances shows clearly that the testator intended to postpone the vesting of the gift over to the time when the life estate would end."*

In this case the legatee died after her father's death said event determining the class, but she died before her mother, her mother's death being the event that would trigger the distribution. The point is this, the Court recognized that the vesting was to occur when the life estate ended.

6. The Ancestor must Vest at the Termination of the Life Estate.

An interesting point must be made. There are two choices as to who vests when a legacy fails. If the legatees who were not in being, and who seem to have never been real people, are determined to vest, they then vest at the end of the legacy, and in a sense they become the ancestor from whom lineal descendants are established be that of their own issue, or to their first purchaser. If Art Hadley, who is a real person, is determined as being the ancestor from whom the legacy is to descend, because he is the legator, it is only logical and natural to conclude that he also must vest at the conclusion of his legacy. Practically,

it can be no other way, because the issue cannot become until the actual in history lapse occurs. This then migrates to the idea that heirs-at-law are determined at the end of the legacy, and not when the testator died, for even he himself cannot vest until his legacy lapses for once he is dead he cannot change his terms. There must be a vesting, which then leads to a lineal descendency from a first purchaser. That first purchaser being Art Hadley's father and mother from whom Art Hadley's whole blood sister, Una Hadley Gay, came, and through her son, John Art Gay, came this petitioner.

C. Miscellaneous Discussion Concerning the Superior Court's Decisions.

This petitioner has observed that there is a tendency for a "one size fits all" approach with the use of case law precedents. With this approach there is a simultaneous movement away from analyzing each case by its own merits with analytical comparisons directly to the enacted laws of the Legislatures. This petitioner has also noted that there is a real tendency to quote statements, with, or without proper context, from published case law opinions, and there is a tendency to give to these quotes the same authority as if the State's Legislature had by its own act made that statement into law. This petitioner believes that there is a real need for comparisons between cases, but the courts need to be very careful with how far they allow these case law precedents to go. With this observation in mind, this petitioner entreats this Honorable Court to be very careful about using case law citations for its foundation from whence to resolve this case.

The main issue that is being argued for by the use of these mentioned cases is that the heirs should be determined at the time of Art Hadley's death rather than at the time his trusts were designed to cease. Mr. Harpootian presented the idea that the Testamentary Trust issues should be resolved with a "resulting trust." This petitioner's initial brief suggested that this issue could be

resolved with an "implied", or a "constructive" trust.[40] A "resulting" trust is a form of a "constructive" trust, but it seems that they arise strictly as a function of law, and, consequently, they are impartial to any recognizable testator intentions, and, consequently, they should not be used. An "implied" trust is a better choice, because it gives effect to the testators intentions. This petitioner truly believes that testator intention is the Court's paramount priority in any construction case. With the increased reliance upon case decisions it seems that there is now an ongoing legacy of Court's awarding to non-relatives that ancestors clearly intended to not award. This petitioner entreats this Honorable Rhode Island Supreme Court to give serious consideration to this issue.

A significant reason as to why the Court decided as it did in Champagne v. Fortin is that the testatrix had left in her will "*a total absence of a testamentary direction.*"[41] That would be a total absence of, "when to chose heirs?", and, "what to do upon the failure of the trust's desire?" An apparent and significant contrast to Champagne v. Fortin, is that Art Hadley's trusts lack no answers to both questions. His trusts are replete with intentions. This is one reason why Champagne v. Fortin is not an equitable comparison. If this Honorable Court decides that the "*personal estate of the settlor*" does not include the Testamentary Trust, and that Art Hadley's clear intentions to not award his Testamentary Trust to his wife and children are of no consequence, and that the time to determine heirs-at-law is not at the time that Art Hadley determined that his trusts were to end, then this Honorable Court will preserve the same unsettling issues that bothered it after Champagne v. Fortin, and that have now been created by the Superior Court's Testamentary Trust decision. Those unsettling issues being that: 1) The trusts are now outside of the blood line. 2) Art Hadley's clear and

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[40] Ronald Eliot Gay, this petitioner's initial Rhode Island Supreme Court Brief. Pages 40 - 41.

[41] Champagne, page 4.

numerous intentions have been disregarded. and, 3) The very same people that Art Hadley clearly intended to not award have been awarded.

Courts seem to have a tendency to allow excluded parties to reenter after exclusion, these parties then ultimately triumph over non-excluded parties. This is likened to musical chairs. When the music stops everyone not on a chair is excluded. Would it be just, if one of the excluded contestants reentered the contest, and then eventually won? And, so it is with Champagne v. Fortin. The Court recognized that the testatrix clearly did not intend to award her deceased son's wife, but once her intention was denied, Mrs. Fred Fortin, excluded by clear intention, then reentered the case and eventually prevailed. The lesson is this, once intention is denied, the following logical sequence is destined to arrive at a wrong conclusion, because the premises are now false.

III. TRUSTEE FEES:

This petitioner has previously submitted two petitions (exhibits 1, 2) to this Honorable Court concerning the unexplained removal of almost 1.7 million dollars from the principle of the trust following the mediated settlement. These two petitions are here appealed to, but the issue also needs to be addressed for any fees that the trustee may have paid himself following the Superior Court's Final Judgment. If the trustee paid himself, he then presumed upon the Superior Court order, for the order did not authorize any fee payments to the trustee. Payment issues to the trustee were addressed by Art Hadley in his trusts, and it is also possible that there may be an original fee schedule that was not presented to the Court. It is also noted that the trustee did not submit photo copies of the actual signed original documents. This petitioner would like to see them. Since Art Hadley addressed how the trustee is to award his trusts, he then created a fee schedule, and the trustee then, as a matter of contract, must abide by those terms. Those terms being that the bank was to profit from the interest of the trusts for the

past seventy-two years, then the principal, **all of it**, is to be paid "*fee simple*" to the heirs. Payments to the trustee's Lawyer is a separate issue that should be awarded by the Court. A payment to Leon Boghossian was not awarded by the Superior Court, and such an award was not specified as to amount by the settlement order. This petitioner believes that any payments from the entire principle should be by permission, specified, and if they are from the principle of the trust they should be open. This petitioner prays that this Honorable Rhode Island Supreme Court will issue any necessary prerogative writs to resolve this issue, set a case precedent, and correct any grievances that may have occurred as a consequence of unjust trustee fees.

IV. LAWYER FEES:

This petitioner is well aware that it is unusual to introduce new issues to a case in a reply brief, but because of events associated with the settlement that have occurred "since" he submitted his initial brief in February 2007, these issues need to be addressed. Rhode Island Statute 9-14-25. "Expenses and counsel fees paid out of decedent's or trust estate." reads as follows:

"In any civil action or other proceeding wherein construction of a will or trust deed or any part thereof is asked, there may be allowed to each of the parties defendant brought in by the action or other proceeding, applying therefore, such reasonable sum for expenses and on account of counsel fees as the court in which the case is pending shall deem proper; the allowance shall be taxed as costs in the cause and paid out of the estate or fund in the hands of the complainant which estate or fund the construction is asked."

In the final June 6th, 2007 Distribution Order authored by Attorney Lauren Jones and issued by Retired Chief Justice Joseph Weisberger there is a subtle troubling concept. On page six, "... *the trustee shall distribute the amount so determined by the Supreme Court to Rev. Gay and Mrs. Cooley in such shares as the Supreme Court shall have ordered, minus the Trustee's attorney fees and*

administrative fees and any other attorney fees and expenses that have been approved by a court of appropriate jurisdiction." The subtle concept of concern is the permission that attorney fees are to be paid as "*approved by "a" court of appropriate jurisdiction.*" Suppose this petitioner were to win his case, the order as it presently reads would "authorize" Mr. Jones or any other attorney to file for fee payments in any other "a" court? This concern needs to be addressed.

The law specifically states that payments "*may be allowed ...such reasonable sum ...deem proper ...*" It seems from Justice Rubine's Final Judgment which details how much to pay the attorneys that the "*may be allowed*" aspect is interpreted as an "unalienable lawyers right", and that "*reasonable*" and "*proper*" is interpreted as "give all you can." For instance this petitioner's attorney David Stractman ($34,000.00) and attorney John Pharr ($98,856.54) worked together and coauthored a joint petition. Was it just that the same legal work received such disproportionate rewards? Was the work of attorneys Paul Brule and Scott Diamond ($74,116.00) who represented one estate and the one person connected to it so much more valuable that the work of attorney Edmond Bennett ($9,723.00) who also represented one estate? This petitioner understands that his appeal in this issue maybe too late for redress, but there is something wrong with the disparity, and this Honorable Court should address the issue to prevent, against others, future wrongs.

Another troubling issue was the lawyer's payments from the trusts occurring from the mediated settlement. Justice Rubine documented the amounts to each lawyer because this money was awarded as an action of his Court coming from the trusts as an expense. This petitioner tried to find out from the trustee's attorney Leon Boghossian what the expenses to the trust were as was ordered by settlement order, and he would not tell this petitioner what those expense payments were. There is something wrong with this.

This petitioner has no problem with the idea of appropriate payments, but the law should not be considered as the lawyer's pot-of-gold. Courts need to seriously consider what is fair for the actual work that has been presented to the court, the court should not award lawyers more because of the challenges to the lawyer arising from the people they represent. Those expenses should be paid to the lawyers by their clients. In the beginning of this case when searching for a lawyer, this petitioner received offers from Mr. Arthur Read and Mr. John Pharr in which they requested both their hourly fees to be paid, and an additional 33% of any award. When deciding appropriate payment awards the Courts should also hold in consideration any other awards that the lawyers may receive. This petitioner does applaud the fact that in the settlement, for the most part, the lawyers were paid from the portions awarded to their clients.

Another concern is that this petitioner believes that the lawyers representing clients who have settled out of the case will most likely ask for additional fees to be paid to them. They are no longer "*defendants*" and they then fail to met the criteria required by law to be allowed payments. If they are entitled to more money the clients who have hired them should pay their services, and as already discussed they should not be allowed to sue for payments in another "*appropriate*" court.

This petitioner does intend to appropriately submit for his time as *pro se*. He was informed by the Retired Chief Justice Joseph Weisberger that while representing himself in this Honorable Court he is entitled to all of the rights and privileges of a lawyer.

V. FINAL CONCLUSION:

It is evident by the true meanings and appropriate context of Art Hadley's actual words in his first failure clause that he intended to use the laws of intestacy as his method to determine his heirs should there ever be a lapse to his legacy, said clause having jurisdiction by construction, said clause also having jurisdiction over the

"*personal estate of the settlor*", said jurisdiction also extending by design to the Testamentary Trust. Since this clause is testamentary and the "*last will and testament*" of Art Hadley includes all properties including "*those over which I may have testamentary control*" it must then be that this failure clause was intended to be At Hadley's Testamentary instruction as to who to bequeath should there be a lapse to the legacy. Since this instruction bequeaths, Art Hadley is not intestate. Since he is not intestate, his contrary intentions are applicable; his appeal to law which includes mandates favorable to him that are contrary to others is also applicable. These intentions, and mandates being contrary to Janet Hunt and Lucille Foster, they then cannot inherit the Living Trust. And, since the first failure clause applies to the whole of Art Hadley's trust estate, the 1941 heirs are denied, and they then cannot inherit the Testamentary Trust. Consequently, the lineal descendents of Art Hadley's whole blood first purchaser inherits. This petitioner then being a 1/11th heir of the two Art Hadley Trusts. In addition to that, this petitioner's requests concerning the trustee fees, and lawyer fees, while being unusual are appropriate because of the circumstances.

For all of the reasons presented in this final reply brief, this petitioner prays this Honorable Rhode Island Supreme Court to prevent a manifest injustice of law, and to grant this petitioner appropriate relief for the described injustices. Also, this petitioner again desires to express to this Honorable Court his sincere appreciation and thankfulness for being allowed to present his burden. And, he also desires to re-express his original sentiment, that he has a great interest in true justice.

Respectfully Submitted By:

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/s/ Ronald E. Gay

Respectfully Submitted to: The Rhode Island Supreme Court, and all counsel, and *pro se* of record on this 10th day of January, 2008, by regular mail.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS SUPREME COURT

FLEET NATIONAL BANK, etc.:		
	:	
Verses	:	**05-204-APPEAL**
	:	
JANET HUNT, et al.	:	

Petition to the Court to Order an Independent Audit of the Art Hadley Trusts

Ronald Eliot Gay, *pro se,* an appellant petitioner in this case, seeks to move this Honorable Rhode Island Supreme Court to order an independent, impartial, thorough, and fair audit of the two Art Hadley Trusts for the following reasons:

1. This petitioner requested of the bank's Trustee, Leon Boghossian III, certain information that the Trustee said he would not answer unless ordered by a court. This petitioner believes that his questions are important for certain aspects of his case, and that the knowledge of the answers of these questions is also important for the Court to know should this Court rule favorably for this petitioner.

2. This petitioner believes that the Bank has paid itself fees from the principle of the two trusts. This petitioner believes for certain reasons that this (these) payment (payments) is (are) a breach of contract according to the trust makers terms. This is a very important issue, that must be properly resolved.

3. This petitioner believes that Mr. Bigious was paid from the pre-settlement amount of the trust, when he, according to the term's of the Settlement Order was to be

paid from the amount awarded to Janet Hunt and Lucille Foster.

4. All of the lawyers demanded that they be paid their fees as "expenses to the trusts." This petitioner believes that he has a right to know all expenses to these trusts, and from what portion of the trusts that these expenses were removed. This petitioner also intends to address certain issues before this Court about the lawyer's fees. A knowledge of the fees is important for this petitioner's appeal.

5. This petitioner was supplied by the Trustee with two spreadsheets one dated August 28, 2007, and one dated September 10, 2007. Between the two spreadsheets there was a $1,691,524.48 difference for the reported principle cash values. This petitioner's question as to; "Why?" was unanswered.

6. The largest trust (Testamentary) had a reported income cash of $12,805.26, while the smallest trust (Living) had a reported income cash of $110,121.00, questions as to; "Why?" were unanswered.

7. This petitioner believes that it is important to know what happened to that portion of income that belonged to Thomas after his death. It is important to know if the bank had properly dealt with those payments through the years. If not, the Court needs to know so that a proper judgment can be rendered.

8. This petitioner's question to the Trustee as to; "Whether, or not these trusts have been used as collateral for loans?" was unanswered. Given the value of these two trusts, and recognizing the importance of knowing that everything is correct, and in good order, and that some of the asked questions are necessary for proper judgment, it is both needful and necessary to order an audit.

Respectfully Submitted By: Ronald Eliot Gay, *pro se*
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(608) 882-5576

/s/ Ronald E. Gay

Respectfully Submitted to: The Rhode Island Supreme Court, and all counsel and *pro se* of record on this 10th day of November, 2007, by regular mail.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS SUPREME COURT

FLEET NATIONAL BANK,	:	
	:	
Verses	:	**05-204-APPEAL**
	:	
JANET HUNT, et al.	:	

Ronald Eliot Gay's Reply to the Trustee's Memorandum Opposing Ronald Eliot Gay's Petition for an Independent Audit.

Ronald Eliot Gay, *pro se*, an appellant petitioner has sought with his November 10th, 2007, petition to move this Honorable Rhode Island Supreme Court to order an independent audit of the two Art Hadley Trusts. The trust's trustee with his November 21st, 2007, memorandum expressed his desire to move this Court to deny this petitioner's request for various reasons. This petitioner herein respectfully presents his case to allow.

The trustee is objecting to, and is asking for a denial of this petitioner's petition, because, in his opinion, this Rhode Island Supreme Court lacks jurisdiction and authority to grant to this petitioner his petition, because it raises new issues. The trustee justified his objections with several case law citations for essentially two reasons. Those being: 1) this petitioner's petition is outside of the scope of the appeal, and, 2) this petitioner failed to raise his issues in Superior Court as required by law.

Is the Petitioner's Petition Outside of the Scope of the Appeal?

This petitioner's petition is inside of the scope of the appeal for several reasons, including:

1. <u>The purpose of this appeal</u>. These trusts are before this Honorable Court to be constructed as Fleet Bank originally entreated. In broad terms this Court is to "completely", not "partially" construct these trusts. Administrative instructions "are" construction issues. ***Any and all issues addressed by these trusts are within the scope of this construction case***. The trust maker, Art Hadley, not only instructed who to pay, but he also instructed what to pay, when to pay, and how to pay. Without question, all of these "to pay" issues must be constructed, and then observed. This petitioner's understanding of Art Hadley's instructions is that the principle, "all of it", is to go to the heirs (whoever they may be). ***From the records supplied to this petitioner by the trustee, it is apparent that almost 1.7 million dollars was taken for an undisclosed reason from the top of the trust (the principle) at the time of the settlement.*** This petitioner also has reason to believe that a similar taking occurred after the Superior Court's decision. In brief, Art Hadley, set up his trusts so that the investment income would benefit both of his children ***"and the bank"*** until the time of the death of the last of his children. After that, the "*trustee shall ... pay over the principle ...absolutely and in fee simple...*" If the bank has taken for itself payments from the principle of the trust, it has violated the terms of the trust to which the original bank (Blackstone) agreed. In simple terms, this would be a breach of contract. When banks purchase banks, the purchasing banks are obligated to honor the contracts that they purchase. By the trust's design, the bank(s) had sixty years to make money, after that, the principle which does not belong to the bank, is to be awarded outright to the heirs. ***The determination of the accuracy and application of this petitioner's claims and requests is clearly a construction issue clearly placing his claims and petition into the scope of this appeal!***

2. The purpose and jurisdiction of this Honorable Rhode Island Supreme Court. This petitioner is well aware that this Court knows better than he what its purpose and jurisdiction is, but he must still make his point. The trustee has argued that, *"This Court does not have jurisdiction to raise claims not raised in the Court below."* The Constitution of the State of Rhode Island in Section 2 plainly states in principle the jurisdiction of the Supreme Court: "*The supreme court shall have final revisory and appellate jurisdiction upon "all" questions of law and equity. It shall have power to issue prerogative writs, and shall also have other jurisdiction as may, from time to time, be prescribed by law. ...*" The trustee's emphatic and categorical declaration that, "*This Court does not have jurisdiction ...*", finds itself in great tension with the Rhode Island Constitution. The Constitution grants authority over "all" questions of law and equity, and also "*prerogative*" power to issue writs, which is what this petitioner has respectfully, and rightfully requested. Simply stated, this Honorable Court does have, if it so decides, constitutional authority to examine any aspect of any case, as may be necessary to ensure true justice. The authors of the Constitution wrote these instructions in principle for many reasons. One being that the Court could, if necessary, override and avoid cumbersome and misapplied non-applicable rules that hinder the mission of determining true justice.

Should this petitioner have raised his issues in Superior Court as required by law?

The timing of this petitioner's petition is appropriate for several reasons, including:

1. This petitioner could not have presented his petition for most of his given reasons in the Superior Court because of the circumstances of the timing of these issues.

The trustee argued that this petitioner should have presented his objections in the Superior Court, and because he did not do so, his petition should be denied. The trustee then cites several cases to make his point that the Supreme Court is not to hear new evidence that was not presented at the Superior Court. The problem with the trustee's citations is that he is citing cases in which their context makes them to be non-applicable. He is citing cases where the denials were issued because the contested issues had to do with existing ***"static"*** facts that existed prior to the Superior Court proceedings. Unique to this present case is the fact that some of these issues and facts are ***"dynamic."*** New facts and new issues have been created, and have emerged ***"since"*** the Superior Court's decision. This petitioner's concerns have arisen since he has noted what seems to be improper payments from the principle. This petitioner is presenting his petition for an audit because of events that happened ***"after"*** the Superior Court's decision, said events being events that are addressed by trust instructions. Consequently, it would have been manifestly impossible for him to have presented his petition's issues in Superior Court.

2. The raise and waive rule. In one of the trustee's cited cases, Pollard v. Acer Group, 870 A.2d 429 (R.I. 2005), pages 432 and 433, Chief Justice Williams gives his insight and application concerning a quote from Retired Chief Justice Joseph Weisberger's treatise, Rhode Island Appellate Practice. Quoting from the treatise, "The Supreme Court of Rhode Island has been steadfast in its adherence to the general proposition that no (new) issues may be raised ...", Chief Justice Williams then offers the Court's perspective of the application to this case of the raise and waive rule: " *...; and we perceive absolutely no exceptional circumstances here indicating that said rule should be disregarded.*" Chief Justice Williams clearly retains in his opinion the Court's right should it ever be necessary to waive the raise and waive rule.

It is interesting that the trustee cites Finkelstein v. Finkelstein 502 A.2d 350. In this case, Justice Weisberger's[42] opinion addresses two issues that support this petitioner's request to seek an honest, open, and accurate accounting, which the trustee is presently opposing. In his opinion, he made it a point to commend the family and the trustee for their honest, open, and accurate accounting. Justice Weisberger commended these people for achieving what this petitioner is presently seeking. He even noted that the IRS audited the trust and found everything to be correct. Justice Weisberger then concluded his opinion with the following observation: *"The grounds for a motion for a new trial are extremely limited, and such motion is appropriate only in instances in which either the trial court may find manifest error of law on the face of the judgment previously entered or* ***there is newly discovered evidence, not previously known or discoverable in the exercise of reasonable diligence, that is of sufficient importance to warrant a new trial of the action.***" It is ironic that this case that the trustee used to discredit the use of new information in the trial process actually contains an observation from Justice Weisberger, in which, he affirms the fact that there are times in which it is appropriate to use "newly discovered evidence." Finkelstein v. Finkelstein has everything to do with static facts that were willfully not addressed. And, the Justice's observations in this case certainly demonstrate that there are times, such as this present time, in which it is appropriate to introduce newly discovered evidence.

In that the raise and waive rule is a rule of appellate procedure and not a law, and that the rule has apparently within it the concept that exceptional circumstances may cause it to be waived, this petitioner believes that in this case there are exceptional and new dynamic circumstances

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[42] The petitioner quotes the opinion writer as "Justice Weisberger", because he was a Justice at the time of his writing. The petitioner intends no disrespect, and he is fully aware that Justice Weisberger is presently the "Retired Chief Justice."

that will directly affect true justice, and in that this case is now in this Honorable Court the time and place to address these issues is here and now, and these circumstances should cause this rule to be waived. More can be said, but space forbids, the petitioner concludes his discussion of the raise and waive rule with comments from the Rhode Island Supreme Court's Appellate Procedure. Article 1. Appellate Procedure. Rule 1. Scope of Rules. - (b) notes that "the Appellate Procedure rules are not to affect jurisdiction." The original foundation for the quotes from the cited cases limiting the Court's jurisdiction seem to be from the Appellate Procedures and not from any laws instituted by the legislature. And, secondly, Rule 2. Suspension of Rules notes that the Supreme Court may suspend the requirements and provisions of the Appellate Procedure Rules as necessary. Admittedly, this would be an unusual step for this Honorable Court to take, but, admittedly, this is an unusual case.

To the idea that only issues occurring after the Superior Court's decision are auditable the petitioner offers his following thoughts. If the rules of the trust have not been carefully ascertained and followed in the present, what confidence does one then have that these rules have been properly followed in the past? And, how would it be possible to have a complete and fair disclosure with only one-half of an audit?

3. Are there new facts, or new issues? Previous to this moment this petitioner has not attempted to introduce new evidence. He has only requested that there be a more clear and comprehensive look at the evidence which already is. The trusts, trust instructions, possible beneficiaries, and other identified evidence already exists. What is new is the way in which this petitioner is looking at the presently existing and recognized evidence. In that he finds it necessary to take a different and a second look at the already existing and known issues, he has not introduced anything that is substantially new. A second

and a different look "*is*" the intention of an appeal so that justice is ensured. It may so happen, that this Court, if it conducts an audit, may find new considerations that it must address, but one is reminded, these considerations would have arisen from that which already is, and the Supreme Court Justices with their collective wisdom will find a just solution. However, while studying to answer the trustee's objections this petitioner has discovered a new issue that must be addressed.

4. Are there missing documents? There is a new issue which this petitioner would like to note to this Court. And that issue is that there is a possibility that there may be other important, yet unsupplied documents. To become more informed, this petitioner interviewed his bank's president, Christopher A. Eager.[43] Quoting Mr. Eager, "*it is a common practice that when trusts are established that a fee schedule is disclosed to the grantor, and that this schedule should also have in it the terms of the costs of closure. If the fees change during the life of the trust, the trustee should send a new fee schedule to the grantor and/or beneficiary asking for written acknowledgement and acceptance of such schedule. The Union Bank and Trust Company typically charges a flat fee to close out a trust. For example, our normal closing fee for a $1,000,000.00 trust is currently $2000.00, although that can vary depending upon the holdings within the trust, and the amount of work involved.*" It is only reasonable that an audit would have as one of it objectives an impartial examination into the possibility that there may be other documents, such as a fee schedule. This Honorable Court should find out if there is such a schedule, and if such a schedule or any other pertinent documents exist. If such a finding is made the natural question would be, "Why did

[43]Personal interview on the 29th of November, 2007, with Christopher A. Eager, President of the "Union Bank and Trust Company." Address: 2 East Main Street, Evansville, Wisconsin 53536. Phone: (608) 882-5576, extension 1112, fax: (608)882-5576, e-mail: ceager@ub-t.com.

the bank not present it (them) to the Superior Court?" ***Such knowledge is very important, and is an absolutely necessary for correct judgment.*** If one thinks about it, closing a trust should not be any different than closing a saving's account. Who would ever think that a bank would pay itself from the principle of a saving's account upon its closure? The money of the trust, the correct money of the trust, presently belongs to the heirs, even though their identity has yet to be established. The "Union Bank and Trust Company" certainly demonstrates a different ethic and approach to the closing issues of a trust than that which seems to have been demonstrated by the Chase Bank. One would ask, "Which approach did Art Hadley choose in his writings?"

4. Is a fair and impartial audit an unreasonable request? In the light of all that has been discussed - "No!"

Conclusion:

In response to the final conclusion of the trustee's memorandum: *"Simply, this Court should deny Mr. Gay's petition because he failed to raise any of the claims therein to the Superior Court below, and this Court may not address issues or consider evidence that a party presents to the Court for the first time on appeal."*, this petitioner appeals to natural justice, expediency, common sense, the law, the Rhode Island Constitution, and the proper contextual application of case law conclusions, especially conclusions that have their foundation in Appellate Procedure. The majority of his concerns were unknowable at the time of the Superior Court's decision, because the trustee's actions had not yet occurred. The proper identification and distribution of the trust's principle is a legitimate construction issue, because Art Hadley, the trust maker, defined the rules for the final distribution of the trust principle. If everything is properly organized without

reproachable issues the trustee should have no difficulty in agreeing to an honest and open audit.

With great respect, this petitioner, Ronald Eliot Gay, *pro se*, requests, as originally requested, that this Honorable Rhode Island Supreme Court may grant as he has prayed, and order an impartial, fair, complete, and independent audit of these two trusts. Thus overriding the trustee's objections.

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/s/ Ronald E. Gay

Respectfully Submitted to: The Rhode Island Supreme Court, and all counsel and *pro se* of record on this 30th day of November, 2007, by regular mail.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS SUPREME COURT

FLEET NATIONAL BANK,	:	
	:	
Verses	:	**05-204-APPEAL**
	:	**(PM 02-6899)**
JANET HUNT, et al.	:	

Petition to the Court for Reargument of its April 7th, 2008 Decision

Ronald Eliot Gay, *pro se,* an appellant petitioner who received an adverse judgment, desires to move this Honorable Rhode Island Supreme Court to grant him an opportunity to reargue his case as may be allowed by Article 1. Appellate Procedure Rule 25.

This petitioner believes that his careful and honest analyses of these trusts, the laws, and Art Hadley's clearly revealed intentions were overlooked, and un-addressed, and he here presents why it is that he believes that this Honorable Court's decision is in error, and why it is that his case should be reargued and reconsidered.

A. Reasons why the Testamentary Trust should not be awarded to the 1941 heirs.

This Honorable Court decided to treat these two testamentary writings as separate entities rather than construing them together as this petitioner believes should have been done. This decision presented no acknowledgment of, nor refutation of, this petitioner's careful study and analysis. The decision also gives no evidence that this Honorable Court carefully studied the actual words of these writings to construe what would be Art Hadley's intentions, and to what extent those intentions govern in the presented dilemma.

This petitioner in a more clear way now restates his

case, and he also presents new arguments from Articles EIGHTH and NINTH which he previously chose to not present, because he had thought that he sufficiently proved his case.

There were, and are, no good arguments as to why these two trusts should not be construed together. This petitioner presented several good reasons from law, and the writings of the testator as to why they should be construed together as one entity.

1. Reasons from Law:

This petitioner carefully documented that studies of law have demonstrated that multiple document estates are to have their documents combined and construed together as being one, and that the two stand together in a complimentary fashion, unless the writing of one contradicts the writings of the other, or they contradict law.

He also demonstrated that Courts in the past have so agreed, thereby establishing case precedents that the two are to be construed and treated as one. It may be arguable that these precedents are from Supreme Court cases in other jurisdictions, and therefore they do not apply, but this petitioner respectfully notes that the idea of the "theory"[44] of a resulting trust was itself not an original thought from this Honorable Court. This idea also came from other writings. This petitioner's position does absolutely no violence to the trusts, to the law, or to other previous Rhode Island Supreme Court decisions.

The Champagne and Redmond cases ***"are not"*** equitable comparisons for this present case, one of many reasons being that in this case there are two complimentary writings that present that Art Hadley made choices that clearly exclude the 1941 heirs from ever inheriting, and that he had also made second and third

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[44] Quoting Justice Condon from Champagne vs. Fortin, 69 R.I. 10, 20 A.2d 838, "Our own view is that the Washington Trust Company case should have been decided on the "theory" of a resulting trust."

bequeathing choices. This Court mentioned that it sees no reason to depart from the precedents that it has set in Champagne and Redmond. The dissimilarities between this case and those is so great that a different decision with this case is not a departure from past practice. In those cases this Honorable Court seriously tried to find, but it could not find from within the testator's writings any evidences of what their further choices may have been, but in this case, clear and definite statements of Art Hadley's intentions abound, and it is obvious that this Court did not try to find them. ***If Champagne sets the standard, as this Court affirms, this Court has failed to follow the example that it set for itself in Champagne by its failure to earnestly search for testator intentions.*** Determining intention is hard work, but determining intention is this Court's responsibility in construction cases.

2. Reasons from Demonstrated Testator Intentions:

Art Hadley's actual written words in his first written last will and testament clearly demonstrate that he intended that his *"personal estate,"* the two trusts, was to be dealt with for inheritance purposes as one entity.

a. His first written last will and testament clearly disposes of ***"all"*** of his property, and identifies the fact that ***"all"*** of his property is to become and be managed as one entity. Articles FIRST, SECOND, and THIRD make specific disposal choices. Article FOURTH disposes of *"'all' of the rest, residue and remainder of (his) estate."* This disposal includes the Living Trust for at least three definite and definable reasons.

1) The first reason is that Article FOURTH'S use of the word ***"all"*** means just that - ***"all."*** ***"All"*** as in *"of every kind, name, nature, and description and wheresoever situated ..."* The Living Trust is certainly that!

2) The second reason is that Article FOURTH clearly and explicitly states that this ***"all"*** includes any

future properties/writings[45] over which Art Hadley may have testamentary control. *"... or over which I may have testamentary control or any power of disposition or appointment at the time of my decease."* Art Hadley clearly, ***by his own actual words***, and emphatically states that this careful gathering of ***"all"*** properties includes ***"all"*** properties *"over which (he) may have testamentary control"*, and the Living Trust is "just that!"- a property over which Art Hadley has *"testamentary control."*

Art Hadley clearly recognized and prepared for the possible eventuality that he may in his future define another property and give to it its own testamentary instructions. There is no logical way in which anyone can define the Living Trust in a fashion that makes it exempt from being a property described as being part of the *"rest, residue, and remainder of (his) estate."*

3) The third reason that the two become one is that Article FOURTH clearly states that everything, *("including that over which (he) may have testamentary control")*, is to *"hereinafter (be) called and referred to as 'said trust estate'."*

One can only conclude that Art Hadley's testament's nineteen references to *"trust estate"*, and the nine references to *"my estate"*, and the one reference in Article TWELFTH to *"my personal estate"* clearly includes the Living Trust. The Living Trust, which is called an **"indenture"**[46], uses the phrase *"trust estate"* twenty-six times and its failure clause **clearly indicates that Art Hadley intended that its fund was to be awarded to the one and same people who are entitled to the**

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[45] If he has testamentary control over "anything," it would have to be defined by a writing.

[46] The Living Trust's codicil continues the "indenture" identification. There are absolutely no provisions within the Living Trust that revokes or contradicts any part of the of the Testament. The instruction that the second bequeath is to go to *"those persons who would then be entitled to the (entire) personal estate"* complements and further refines the meaning of the Testaments EIGHTH and NINTH Articles.

"(entire) personal estate of the settlor!" The two trusts are stitched together by Art Hadley's careful and unique use, in both trusts, of the phrase *"the personal estate of the settlor,"* and it is clear that he intended that his "entire" personal estate was to be singularly awarded. The rules of language and logic allow no other interpretation of Art Hadley's intention that his *"personal estate"* is to be treated as a single entity for distribution. Recognition of this fact is, as Howard Cosell used to say, "a marvelous grasp of the obvious." If one overlooks this fact they have disregarded Art Hadley's clearly defined intentions.

b. The design of Art Hadley's trusts demonstrate that he did not intend to award the 1941 heirs, and that the two trusts are to be construed together as one. Some reasons for this observation are: One testator, one bank, the same trustee and co-trustee for both writings, one personal estate, both writings have identical initial distribution plans, both writings have identical codicil defined distribution plans, both writings are exactly the same except for necessary differences to make one a functioning indenture, and the other a last will and testament, both have words that tie them together, both writings originally held the 1941 heirs as the desired people for the testator's final gift, both codicils forbid the 1941 heirs as being the final people of the testator's gifts, both have specific statements other than the codicils that forbid the 1941 heirs, both codicils establish the testator's biological grandchildren (issue)[47] as his first desired beneficiaries of the testator's gifts, both are complimentary in every way.

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[47] The Court's decision notes that *"unfortunately, the trust itself is silent about the definition of issue."* This is an incriminating admission that this Court has not seriously thought about Art Hadley's use of words, and what he meant by them. Essentially anyone who has looked into the legal use, and Art Hadley's use of the word "issue" clearly understands that "issue" is a very explicit and narrowly defined word that in the testament's approximately nineteen uses of it, can only refer to "biological" descendents. Janet Hunt and Lucille Foster could never

c. ***An argument that was not previously presented, because this petitioner had thought that he had sufficiently made his case is that the testament's <u>EIGHTH</u> and <u>NINTH</u> Articles actually forbid the 1941 heirs from inheriting.*** This petitioner does not consider that this is necessarily a new issue, because these Articles are in the testament which the Courts have read. These Articles present a very important consideration, and this Court's decision should be overturned because of these Articles and their implications. They can not be overlooked! The Articles are:

Article <u>EIGHTH</u>: "I hereby declare that my omission to make any other or further provisions in this will for my children, Thomas P. Hadley and Sarah Louise Hadley, or for any child or children that I may have, or for the issue[48] of any deceased child or children of mine, is intentional and not occasioned by accident or mistake."

Article <u>NINTH</u>: "I hereby declare that the bequests, devises and other provisions hereinbefore made to or for the benefit of my said wife, Frances E. Hadley, are in lieu of dower and of all other interest she may have in and to my estate."

These two Articles are Art Hadley's statements that Thomas, Sarah, and Mrs. Hadley cannot inherit in any way other than by the way presented in the writings. These statements are like statements people make when they give $1.00 to a person, thereby effectively disinheriting them, and, consequently, removing from them any opportunity to find another way to inherit. If Art Hadley's immediate family could not inherit in any other way in their lives, how is it possible that they can inherit when they are dead? ***This Honorable Court must answer this question.***

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inherit as "issue" with or without General Law 15-7-16 (a), and the Court's logic that it ***"is"*** 15-7-16 (a) that prevents Janet Hunt and Lucille Foster from inheriting as issue by the terms of the trust is an embarrassment. This is only one example of many that this Court has misunderstood the trusts and misapplied this law.

[48] "Issue" as in biological issue.

Of interest is Art Hadley's use of the word "dower." "Dower" is "the part of, or interest in the real estate of a deceased husband given by law to his widow during her life."[49] Art Hadley is forbidding the implementation of Rhode Island General Law 33-1-10. Choices like this are testator privileges that Courts must protect! That which is given by law is that which is given by intestacy. ***Art Hadley is declaring that his wife and children and their issue "can not" inherit by intestacy.*** This presents a dilemma.

First, if there were true biological issue they would inherit, but if there is "alien" issue, they are forbidden by testator intention[50] from inheriting. It is obvious that Art Hadley, by specifying "issue" is effectively disinheriting any adopted child regardless of age adopted, and Janet Hunt and Lucille Foster, are most certainly alien issue who have been artificially introduced into Art Hadley's legacy by adult adoption.

Secondly, the Testament clearly forbids an intestate distribution to his wife, children, and alien issue, and the Living Trust failure clause seemingly authorizes one. This dilemma can only be resolved by contextual analysis[51]. Simply, the testator is declaring that the heirs must be his heirs[52] who are to be determined when there is no continuing or remote issue when his first desire to award to his biological descendents fails because there are no living biological descendents at the death of the last of his immediate family. This petitioner's analysis presents no

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[49] Merriam-Webster's Collegiate Dictionary, Eleventh Edition, 2003.

[50] One exclusion of R.I.G.L. 15-7-17(a) is *"a contrary intention that shall appear by the terms of the instrument"* Without question, Articles EIGHTH and NINTH of the testament are *"contrary intentions."*

[51] Contextual analysis is "construction," it is hard work, and this petitioner believes that this Honorable Court did not truly go through the hard work of constructing the intentions of the testator, and that it did not fully think these issues through. Please forgive his directness, but he knows of no other way to state his understanding.

[52] His heirs would have to be heirs of his blood determined by R.I.G.L. 33-1-1, since R.I.G.L. 33-1-10 is nullified by intention.

contradictions of law, logic, and of Art Hadley's intentions. ***This Court's decision has created a dilemma of the same***.

Art Hadley clearly declares that this is ***"his"*** estate, and not his wife's. It is typical for one generation of a family to invest in the next generation. Art's father and mother were key players in his success, and that is one of many reasons why inheritances are to return to a blood line first purchaser. Art Hadley has clearly declared that his immediate family can only inherit by his express terms! There is no other way. If this testament then comes to an intestate distribution, it must be distributed to his heirs who are outside of, and not a part of his immediate family. ***This clear intention "forbids" a resulting trust that awards to the heirs of 1941, because this resulting trust is awarding contrary to an operative intention, and this should never happen***. And, as this petitioner has noted, a ruling favorable to him will do no injustice to this Court's previous decisions in Champagne and Redmond, for those cases were different in that they presented to this Court no evidences of other testator intentions.

B. Why the Living Trust should not be awarded to Janet Hunt and Lucille Foster.

This Honorable Court's ruling has, for several reasons, created a dilemma in law by awarding the Living Trust to Janet Hunt and Lucille Foster.

This petitioner has previously noted that it is difficult to analyze one trust absent from the other because these two writings are interconnected. Consequently, it is almost impossible to arrive at a correct conclusion without a proper view of both. However, this petitioner will attempt to demonstrate reasons of law, absent from his recommended constructions as to why it is that this Honorable Court has improperly ruled.

As noted, there is a dilemma with this award, and that dilemma, admittedly originally arises from the fact

that the failure clause itself presents a dilemma.[53] The Guardian *ad litem*, Fleet Bank, adverse attorneys, and Justice Rubine originally attempted to solve this dilemma by declaring, (without any intelligent analysis as to why), that Art Hadley is intestate, and, consequently, this trust then needs no construction, and since it needs no construction, Janet Hunt and Lucille Foster are the unquestioned heirs, and Ronald Gay, *pro se*, go home. Mr. Harpootian, in response to this petitioner's arguments, changed his original position from one where the trust has "failed," to one where the trust is "frustrated," and he also carefully moved away from making references to the ideas that Art Hadley is intestate, and that this may, or may not be, a "construction" case. Why?

This Honorable Court completely skirts a fair discussion of the testacy vs. intestacy issue by completely ignoring it in its decision. This Court made no determination as to whether, or not, Art Hadley is testate or intestate, but in the final analysis this Honorable Court has essentially treated Art Hadley as if he were intestate, and it then categorically dismisses Art Hadley's numerous clear intentions, and the mandated exclusions of law, and gives to them, and this petitioner's arguments no thought, no acknowledgement, and no analysis. Rendering a formal decision that will set case precedents, and be entered into formal legal reporters without a fair identification of, and explanations, as to why, or why not the contrary arguments either apply, or do not apply, makes this a decision that does not merit the seal of approval of any Supreme Court.

This Court essentially makes no affirming statements as to whether, or, not, this is a "construction" case. Fleet's original petition was that the Court would "construe" these trusts. This Court's opening quote of Fleet's petition omits the word "construe." This Court has failed to give important analysis as to whether, or not, this is a "construction" case, and if that is so, what are the

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[53] This is especially true when the trusts are not construed together as they should be.

implications of R.I.G.L. 15-7-16 (a)'s mandated exclusion *"... this sentence shall not apply in the 'construction' of any instrument ..."*

One way to begin a trip down a path of error is to improperly identify the defining questions. This Court affirmed two questions that it presented as being the defining questions of this case. Those questions being: 1) whether adult adoptees can inherit from the lineal ancestors of their adoptive parents when the trust itself directs the trustee to apply Rhode Island's intestacy laws for purposes of distributing the trust's assets, and 2) whether adult adoptees are excluded from the definition of "issue" as used in a trust agreement. For many reasons these questions are subtle and misleading, and there are other defining questions that this Court either overlooked or refused to consider.

Concerning the second question, this Court decided that adult adoptees are excluded from the definition of "issue" as it is used in a trust agreement. And, consequently, Janet Hunt and Lucille Foster cannot inherit by the terms of either trust.

This is true, but it is not all of the truth. This Court correctly answered the question that it asked itself, but it did not ask the correct question. The correct question suggested by the actual words of the law should be, "Whether adult adoptees are excluded from ***"being considered as issue"*** in construction cases?

Both questions present a dilemma. Concerning the first question, the question should be: "Whether adult adoptees can inherit from the lineal ancestors of their adoptive parents when the trust itself directs the trustee to apply Rhode Island's intestacy laws for purposes of distributing the trust's assets, ***and a mandated exclusion of law may apply***?" This Court did itself a professional disservice by presenting the idea that both R.I.G.L. 33-1-10 and 33-1-1 are applicable and that the two *"statutes, read together, make it clear that the surplus of the Art Hadley Living Trust should be distributed to Art*

Hadley's kindred." This statement lacks thought because R.I.G.L. 33-1-10 applies only to intestates who die and leave a surviving spouse. This Court's choice demonstrates that it is R.I.G.L. 33-1-1 that applies.

The Court essentially resolved this dilemma by declaring that Janet Hunt and Lucille Foster can not inherit from the trusts because R.I.G.L. 15-7-16 (a) prohibits them from being "issue" under the terms of the trust, but that R.I.G.L. 33-1-1, and 33-1-10 makes them "issue" under the intestacy laws because they are *"kindred."* Simply, and respectfully stated, this is bad thinking.

Intestacy laws only present distribution methods for different scenarios. R.I.G.L. 33-1-1 does state that estates *"shall descend and pass in equal portions to his or her kindred, ..."* The question is, whether, or not, Janet Hunt and Lucille Foster are *"kindred,"* and, consequently, *"issue"* as the term is used in this law. The word *"issue"* does not appear in this law, but it is an appropriate substitution for *"children, or their descendants, if there are any."* It is obvious that there are ***"no"*** intestacy laws that define the word *"issue,"* unless R.I.G.L. 15-7-16 (a) is considered to be an intestacy law.

For this word and its appropriate usage to be defined one must look elsewhere in the Rhode Island Statutes. The Rhode Island Legislature enacted, and the Governor signed into law R.I.G.L. 15-7-16 (a). The first sentence of this statute emphatically declares that adopted children regardless of their age when adopted enjoy all the inheritance rights of natural born children, ***"except"*** as elsewhere provided in this same statute. In the classic intestacy case of Tinney vs. Tinney this Court affirmed the first sentence because in the Tinney case it applies. This petitioner's analysis of Tinney is not in variance to this Court's decision in that case.

In this case, Art Hadley, who is testate, has in his trusts, which are being constructed, chosen the intestacy method to determine who his second choice heirs are to be.

The dilemma is this: R.I.G.L 15-7-16 (a) categorically excludes adopted adults from even being considered as kindred in construction cases where the testator has died prior to the adoption of the adult adoptees. In other words, in this narrow instance, Janet Hunt and Lucille Foster perfectly fulfill in "every" respect the law's intention that they are not to be deemed kindred for the purpose of inheritance. Again, Janet Hunt and Lucille Foster, by the choice of the legislature, are not kindred in this circumstance, other circumstances - yes, but in this one- no!

This petitioner respectfully notes that this Court has completely failed to properly analyze and apply this law. This Court has correctly noted that the law forbids Janet Hunt and Lucille Foster from inheriting as issue under the terms of the trust, but it has grievously failed to also note that the law explicitly and categorically forbids Janet Hunt and Lucille Foster from even being considered as being kindred in construction cases. ***If they are not kindred, "How then can they inherit?"***

Although this petitioner disagrees with this Court's past decision in Champagne, he never asked this Honorable Court to *"overrule law set forth in prior cases..."* This Court's assertion that this petitioner has argued for the law to be overruled is incorrect, and he objects to the idea that his arguments may be misrepresented in official reports. This assertion demonstrates that this Court has failed to properly understand and address this petitioner's arguments, at least in this respect. This petitioner also carefully demonstrated that he thought that the Tinney decision was correct to the written law, but he believes that this Court has placed too much reliance on Tinney, and that it has, (for many reasons), taken the idea that *"under Rhode Island's intestacy laws, there is no distinction between adult adoptees and minor adoptees"* farther than the Legislature intended it to go. By so doing, this Court has stepped outside of its boundaries by leaving its domain of judging law to enter into the legislature's domain of making law. The statement may be good for intestacy

cases, but this Court is reminded that it is dealing with a testate construction case. As noted, if a judgment were made favorable to this petitioner, it would do no violence to Tinney, Champagne, or Redmond.

B. A Brief Analysis of R.I.G.L. 15-7-16 (a).

R.I.G.L. 15-7-16 (a) is difficult to comprehend. The following paraphrase is true to the intended meaning of R.I.G.L. 15-7-16 (a). R.I.G.L. 15-7-16 (a) paraphrased:

"This sentence in R.I.G.L. 15-7-16 (a) grants that all lawfully adopted persons shall be deemed within a limitation as lawful kindred for inheritance purposes,

except as otherwise provided in 15-7-16 (a).

However, adult adoptees are not to be deemed, or considered as being kindred in any construction cases, if the testator died prior to their adoption."

This Court must ask, "Is R.I.G.L. 15-7-16 (a) one of Rhode Island's intestacy laws?" If this is an intestacy law, it presents to this Court an intriguing dilemma. The adult adoptee exclusion contained within this intestacy law clearly demonstrates that, ***"Significantly, the Legislature "HAS MADE A" distinction between the rights of those adopted as minors, and those adopted over the age of eighteen."*** This petitioner has no disagreement with the Court's assertion in Tinney that *"the Legislature made no distinction between the rights of those adopted as minors and those adopted over the age of eighteen"* as long as the original and correct context of this quote is properly applied.

That context was established when this Court presented its analysis of Tinney's defining question: *"Whether an adopted adult has the right to inherit under the laws of intestate succession from a deceased adoptive parent is an issue of first impression in Rhode Island and requires an examination of the relevant statutes."* It has been previously noted that the key to Art Hadley's construction case is "PROPER CONTEXT!" Tinney vs. Tinney was a "classic" intestacy case, and Art Hadley's case

is a "classic" construction case. In Tinney the defining question was about inheriting *"from"* an intestate adoptive parent. It was not about adult adoptees inheriting as *"kindred"* in a construction case where the testator died prior to their adoption.

In Tinney's peculiar circumstances the Legislature made no distinction between the inheritance rights of minor adoptees and adult adoptees. But in the peculiar circumstances construction cases this Rhode Island Legislature has dramatically and categorically made a distinction between the rights of minor adoptees and adult adoptees. The Rhode Island Legislature has deemed that, in this instance, adult adoptees have no rights in that they are not kindred in any sense! If they are not kindred, "How can they inherit?" ***This Honorable Court has created a dilemma in law by improperly importing and imposing its Tinney assertion, that there is no intended distinction between the inheritance rights of minor and adult adoptees when the clear and unambiguous language of R.I.G.L. 15-7-16 (a) indicates that the Rhode Island Legislature "does" intend that there is a distinction between the inheritance rights of minor and adult adoptees!***

C. This Honorable Court should still Conduct an Audit of the Trusts as Petitioned.

Article 1. Appellate Procedure, Rule 31. Appeals from judgments in cases referred to auditors demonstrates that audits are something that Rhode Island Courts do. This petitioner had petitioned that the trusts would be audited for several reasons. This petitioner believes that this Court must for the protection of its own integrity have an audit of these cases for various reasons, even if this petitioner loses his final appeal. The alleged breach(s) occurred while these trusts were under the oversight of this Honorable Court. Mr. Leon Boghossian, in his oral arguments, assured this Court that this money is being managed and cared for, and etc., and etc., yet he never refutes the objection that it seems that the bank may have

paid itself from the principle. ***If there have been no breach(s), "Why did he not just simply say so?"*** If this petitioner's numbers are correct, the bank paid itself approximately 15% - 20% of the principle for its fee. If this occurred, it most certainly is very wrong, it would be a clear breach of the testator's contract and his intentions, and it may even be a breach of other State or Federal laws. If this breach has occurred, and if it were ever to be found out that this Court did nothing about it, the situation would present to this Court a great embarrassment to its honor.

D. Final Conclusion.

This *pro se* petitioner fully admits that he is not a lawyer, but he can think, and he is reasonably versed in language. He has seriously and carefully studied these trusts, and all applicable laws. He has presented to this Court an argument that is respectful to the professional standards of this Court, and worthy of its attention. All who study what he has written must admit that he has presented an honest, accurate, thoughtful and thorough analysis of this entire case that is true to the testator's intentions, the plain and ordinary meanings of words, and "all" of the laws of Rhode Island. This petitioner's analysis has congruently touched upon essentially every issue of this case. He notes that all of his opponents have to be very careful with their arguments, because congruency is not possible with their arguments. His opponents have had to change their arguments over time in response to this petitioner's, but his arguments have remained the same, and need no change. This petitioner feels that he and others have been grieved by this Honorable Court's decision, and that its decision is not congruent with testator intention, the rules of language and logic, and "all" applicable Rhode Island laws. This Court's decision has created a dilemma with the mandated categorical exclusion contained within R.I.G.L. 15-7-16 (a) where the Legislature has declared that the law that gives inheritance rights to adopted children does not apply to adult adoptees in

construction cases, which this is. ***This Court did not sufficiently explain the meaning and application of the mandated exclusion to anyone's satisfaction.*** Simply stated, this is poor legal analysis.

This Court's decision clearly demonstrates that it has not invested the necessary time and work to properly understand this case, and it has refused to confront and answer basic and necessary foundational questions that are necessary for a proper decision.

This Court presented two defining questions that it believes decides the case. It has been clearly demonstrated that those two questions are subtle and misleading, and that they are a wholly inadequate analysis of this case's issues. This petitioner has clearly demonstrated that there are also other necessary questions that must be identified, asked, and answered. And, that these questions make all the difference. 1) Is Art Hadley testate, why, or why not? 2) Is this case a construction case, why, or why not? 3) If this is a construction case, how does the mandated exclusion of 15-7-16 (a) that forbids adult adoptees from even being considered as issue apply? 4) Has Art Hadley demonstrated his intentions, and if so, what are they, and to what extent do they apply? 5) If Art Hadley is intestate, does his intention to forbid his immediate family and alien issue from an intestate inheritance no longer apply due to his intestate condition, even though this instruction (Testament, Articles EIGHTH and NINTH) can only become operative if his first desire fails, and he then becomes, as some would say, intestate? And, if Articles EIGHTH and NINTH become operative and force the corpus to non-immediate family heirs can it then truly be said that he is intestate? 6) Should these trusts be construed together, as other studies of law, past court precedents, and Art Hadley's instructions clearly imply, why, or why not? 7) Is it true that this appellant petitioner asked this Court to "overrule established law," as is asserted in this Court's decision, if so which one, and why? 8) Do the facts of the Art Hadley trusts equitably compare

to Tinney, Redmond, and Champagne, and if so why, and to what degree? 9) Has, or has not the bank committed a breach, and if so, what should be done about it? 10) What is the meaning and consequence of the idea and instruction contained within the Living Trust's failure clause that the *"(entire) personal estate of the settlor"* is to be awarded as a single entity when this same phrase is also in the testament, and the testament clearly instructs that testamentary properties/writings are to be part of the "rest, residue, and remainder of Art Hadley's estate? 11) Are the different final instructions in both writings contradictory, or complementary, and if so, or not, how does this reflect Art Hadley's intentions?

This Court's decision: has refutable contradictions and errors within it, it does not address the carefully researched and submitted foundational issues, and it does not reflect the necessary level of thought and analysis that a construction case, such as this one, requires. The level of thought and analysis demonstrated in this opinion does not rise to the high bar of expectations that one would expect from any Supreme Court.

This petitioner beseeches this Honorable Rhode Island Supreme Court to give serious attention to his request, and the reasons for it. He apologizes, for it seems that he was not direct enough in his differences with Justice Rubine, he had thought that since this case was *de novo*, that a foundational approach was appropriate. He has been very direct and intense with his presented differences, but it is his hope that he has not been rude or disrespectful in any fashion.

Sir William Blackstone, Knight, carefully noted that one way to determine if a decision is good is to consider the effect and consequences. This petitioner reminds the Court that one of the consequences of its decision is that Art Hadley's trusts have been inherited by people who are completely unrelated to Art Hadley and his legitimate and whole blood heirs-at-law have been grieved. For all of the reasons given, and others, this should not be.

Given the value of, and the importance of these two trusts, a correct ruling is important, not only for this petitioner, but also for the State of Rhode Island, and future petitioners who will face challenges from adult adoptees, and others who find creative ways to artificially enter into legacies thereby removing inheritances from legitimate whole blood heirs-at-law. And, given that this decision has numerous deficiencies in its analyses, it is both needful and necessary that this case should be reargued before this Honorable Rhode Island Supreme Court. This petitioner, in good faith, for good reasons, earnestly entreats, and prays that his petition will be fully granted.

Respectfully Submitted By: Ronald Eliot Gay, *pro se*
31 West Church Street
Evansville, Wisconsin 53536•
(608) 882-5576

/s/ Ronald E. Gay

Respectfully Submitted to: The Rhode Island Supreme Court, and all counsel and *pro se* of record on this 15th day of April, 2008, by regular mail.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS SUPREME COURT

FLEET NATIONAL BANK,	:	
	:	
Verses	:	**05-204-APPEAL**
	:	**(PM 02-6899)**
JANET HUNT, et al.	:	

Reply Petition to the Court for Reargument in Response to Opposition Petitions Submitted by Mr. Harpootian and Mr. Read on behalf of their Clients.

1. This petitioner hereby formally requests that this Honorable Court will allow the inclusion of Articles EIGHTH and NINTH into its decision as may be allowed according to Appellate Procedure. Rule 2. Suspension of Rules. And that this Honorable Court will forgive him this oversight.
2. This petitioner hereby reaffirms his original request that he be granted a reargument as may be allowed by Appellate Procedure. Rule 25. Reargument.

Mr. Read's misleading inference that reargument is (only) for those whose cases have ended on a divided vote is clever, but incorrect. Quoting Mr. Read, *"RAP 25 addresses the issues of the argument and provides that reargument is appropriate when the Court has been evenly divided in an opinion."* The actual Appellate Procedure reads as follows, *"Petitions for reargument of causes heard and decided, **including** those petitions requiring reargument because this Court has evenly divided in an opinion, ..."* Mr. Read insults this petitioner's "analytical" style, yet it is apparent that he should do a better, or maybe a more honest job of analyzing this Courts rules, because it is apparent that

permission for reargument from this Honorable Court is exclusively a matter of its own discretion, and this choice is not exclusively reserved for divided votes.

Mr. Read accuses this petitioner of being "intemperate." This petitioner can only say that he labored to not be rude to this Court, but he was honest with his thoughts. Mr. Harpootian noted that this petitioner was only expressing "disagreements," and that these "disagreements" failed to "demonstrate" any error. Mr. Harpootian failed to note that this petitioner also submitted with his "disagreements" reasons for the same.

For the most part Mr. Harpootian and Mr. Read argue from Brimbau v. Ausdale Equipment Rental Corp., 120 R.I. 670, 389 A.2d 1254 (1978) as their authority to make the following points: 1) This petitioner has failed to meet the burden of proof to demonstrate error in the Court's decision by failing to demonstrate that he had earlier arguments and briefs that were either misapprehended or overlooked, and that 2) Brimbau makes it clear that nothing new can be introduced into the equation, and that this petitioner's attempt to introduce the EIGHTH and NINTH Articles from Art Hadley's Testament should be denied.

1. Concerning the second objection that Brimbau makes it clear that nothing new can be introduced.

In Brimbau Chief Justice Bevilacqua ***"also"*** held that, "*We recognize that there is a trend towards limiting retrial to specific issues whenever possible. However, the question of what should be done in a given case is largely a matter of discretion.* See Goodman v. Zawadowicz, 84 R.I. 50, 58, 129 A.2d 541, 542 (1957); Clark v. New York, N.H. & H.R., 33 R.I. 83, 102-03, 80 A. 406, 413-14 (1911)."

The Chief Justice made it clear that the Court ultimately decides what are, or what are not appropriate reasons for a reargument, and also what it is that the Court will, or will not allow in those arguments. This petitioner clearly recognizes that it is the Court's mercy that will allow to him a reargument, and he also realizes that if

allowed, it is this Court's discretion that will allow, or dictate to him his choice of arguments, but this petitioner also respectfully notes that the foundations in law that the attorneys are so desperately trying to establish do not exist because Article 1. Appellate Procedure Rule 2. Suspension of rules, so clearly states, *"In the interest of expediting decision, or for other good cause shown, the Supreme Court may suspend the requirements or provisions of these rules on application of a party or on its own motion and may order proceedings in accordance with its direction."* It has been shown that this choice to forbid, or to allow additional considerations from Articles EIGHTH and NINTH exclusively belongs to this Court, and that there is no mandate of law.

The attorney's objection to noting Art Hadley's Testamentary Trust's Articles EIGHTH and NINTH is that this is a new argument, and that it should not be considered. This petitioner agrees with Mr. Harpootian, and Mr. Read that they have a valid objection, but, even so, their objection is not an absolute. There are some additional considerations. First, this petitioner realizes that he should have better presented this aspect of his case, but in one sense this is not a new argument because these Articles are not new arguments from new sources. They are a legitimate part of the accepted body of evidence. Everyone who has read the Testamentary Trust, ***which is in its entirety is its own piece of accepted evidence,*** has read these Articles. This Honorable Court has itself read the Articles when it examined Art Hadley's Testamentary Trust for his intentions.

Another consideration is this. These Articles are a subset of the larger argument that these two trust should be construed together as one. This petitioner believes this argument was either misapprehended or overlooked in his briefs, because he sees no evidence that this Honorable Court considered this argument. This petitioner's first petition carefully explains why it is that he thinks that this Honorable Court has erred by not construing the two

together. This petitioner noted several reasons as to why this should be, and those reasons stand apart from the disputed Articles, but the fact is that these articles are only further evidences that the two trusts are complimentary, and without them the conclusion would be the same as with them. It is just that these two Articles clearly make Art Hadley's intentions more definite and definable.

Another consideration for this Honorable Court is this. This Court's mission is to search for testator intention so that the Court can ensure it has determined true justice. Unfortunately, in people situations that is hard work and in the *nitty gritty* of the process not everything is perfect, and mistakes are sometimes made by good people who are trying to do right. However, justice is for all without any respect to social standing, the quality of lawyers, or the quality of their arguments. This Honorable Court has a duty to award these trusts to those who have the correct argument, even if it is not the best presented argument. This petitioner reminds this Court that he has presented a congruent argument that has essentially analyzed every aspect of this case, and his arguments have been consistent, with the exception of continued refinements and additional insights that still lead to the same conclusions. His opponents have no claims to the same.

In his petition this petitioner has noted that he sees no evidence that this Honorable Court has asked itself, *"Are there discernable intentions of Art Hadley demonstrated by what he has said, and by what he has done, and if so, what are they, and how do they apply?"* This petitioner for many good reasons believes that this Honorable Court has overlooked his arguments for the validity of, and the application of Art Hadley's intentions. His intentions are what they are, they are to be discerned, and Articles EIGHTH and NINTH clearly help one to better understand Art Hadley's intentions. They then are necessary for the Court's goal, and in that the reargument phase of a trial is a legitimate part of this Honorable Court's process, if necessary and allowed. It stands against

reason and natural justice to omit the Articles as being a legitimate part of the reargument process if permission for reargument is granted. If these Articles have no impact the adverse attorneys will not be challenged by them.

2. Concerning the first objection that this petitioner has failed to meet the burden of proof that is his to demonstrate that this Court has made an improper judgment.

Both Mr. Harpootian and Mr. Read share the opinion that this petitioner has failed to make his argument in demonstrating his opinion that this Honorable Court has erred in its judgment, and that he has presented illogical arguments that fail to make his point. To this observation this petitioner can only conclude that he is conversant with a different language than the English of the lawyers, and he also notes that they have throughout this case demonstrated a remarkable skill in persuading people to their opinions with sound bite arguments that deal with only final conclusions without credible analyses of their issues from either the law or the trusts. The concepts of these trusts are difficult, they require exceptional work for a true judgment, and this petitioner has reasonably presented the foundational issues. This petitioner fully realizes that there are some aspects of his arguments that could have been better presented, but he still maintains that even with his mistakes he has still presented congruent arguments worthy of this Honorable Court's attention and appropriate for its professional standards.

This petitioner assumes that should his petition be granted that this Court would set a calendar date, and with this date this Honorable Court would announce to this petitioner whatever else it is that it needs from him, be that briefs and the rules of them, and etc. Should such a privilege be granted, this petitioner would do his best to honor this Court's requirements, as he has in the past of his time in this Honorable Court. However, that being so, this petitioner does believe that he has demonstrated sufficient reasons as to why it is that his disagreements are

worthy for a reargument. In a brief restatement for the benefit of Mr. Harpootian and Mr. Read, some of his reasons being:

1) ***The two trusts should be construed together for reasons of law and clearly revealed testator intentions.*** This construing would have a tremendous impact, and this Court's decision gives no evidence that it held in consideration even the existence of this petitioner's arguments for this construing. This petitioner believes, for good reasons, that this argument of his that was well presented in his brief, and also addressed in his oral argument was overlooked by this Court.

2) ***This Court has created a dilemma in law with R.I.G.L. 15-7-16 (a).*** This law clearly states that "lawful adoptees are to be deemed within a limitation." This "deeming" is a choice of the Legislature that they are to be considered the same as "kindred" of all kinds for inheritance purposes. Without question, one of the inheritance purposes being intestacy circumstances. But, this "deeming" is "***with a limitation***." That "limitation" is that this "deeming" does not apply to adult adoptees in construction cases where the testator died prior to the adoption. In such a case where "any" instrument is to be constructed the first sentence that "deems" does not apply for adult adoptees, and they then, are not to be "deemed" or considered as being as "kindred" in any sense. As respectfully as this petitioner can say, this Honorable Court's decision presents to him an incredibly poor analysis of this law. This petitioner for good reasons believes that his written arguments concerning this law have been misapprehended and overlooked.

It is probably no accident that Mr. Harpootian did not accurately quote this Honorable Court's defining question, *"whether adult adoptees can inherit from the lineal ancestors of their adoptive parents when the trust itself*[54] *directs the trustee to apply Rhode Island's intestacy*

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[54] This petitioner believes that a better restatement is. *"... when Art Hadley himself directed in his trust that the trustee is to use Rhode*

laws for the purposes of distributing the trust's assets, ..." when he states that *"the Court clearly and concisely held that the Living Trust's failure clause required the application of the laws of intestacy in effect at the time of the trust's failure and that, applying the law of intestacy and this Court's prior holding in Tinney v. Tinney, ..., persons adopted as adults were not precluded from inheriting. ...*" If one casually reads Mr. Harpootian's affirmation, they will think that this affirmation is essentially a restatement of the same, but there is a subtlety. This Honorable Court's defining question is presented in a fashion that is too close for Mr. Harpootian's comfort to this petitioner's argument that Art Hadley's use of the intestacy laws is simply his bequeathing "method" and not his "condition." If this use of the "intestacy laws" is a bequeathing method, as this petitioner for many real reasons has maintained, Art Hadley is then "*testate!*" And, consequently, this then is a *"construction"* case! And, consequently, Janet Hunt and Lucille Foster cannot be "deemed" as, or considered as kindred for inheritance purposes! Distribution determined by a testator's choice to use the intestacy rules of descent is certainly an inheritance purpose. This Honorable Court has completely overlooked, and not addressed this petitioner's clear arguments to this fact.

Mr. Harpootian and Mr. Read are excellent and careful writers. Their argument styles are to present final conclusions with very fancy complimentary generalities to support them. In other words, their arguments are fluff and lack substance. They never in any of their arguments present thoughtful and "analytical" studies that address the issues. This petitioner likens their arguments to a

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Island's intestacy laws as his method for determining his heirs to distribute his trust's assets ..." This restatement offers no change of meaning to this Court's writing. It also states what it is that this petitioner has previously noted. The intestacy laws are being used only as a method by which to bequeath, and by so doing Art Hadley's bequeathing instruction keeps him testate!

beautiful wedding cake, and when the bride and groom cut into it they find, to their surprise and embarrassment, that it is just a hollow shell of frosting with no substance. In one of Mr. Harpootian's earliest Superior Court briefs which apparently was retracted, Attorney Arthur Read, the same duplicitous Mr. Read[55] who is now aligned with Mr. Harpootian, took Mr. Harpootian to task for creating a work of "fiction." This petitioner is not trying to be rude, but he is trying to demonstrate an important fact. He has in his briefs addressed with great thought and analysis essentially "every" issue of this case. Have the lawyers done the same?

3) ***This Court, for some reason, is holding onto its Tinney decision in a fashion that exceeds the requirements of the Legislature***. This petitioner has demonstrated a correct analysis and application of this Court's Tinney decision. He believes that this analysis was not overlooked, but that it was misapprehended.

4) ***This petitioner presented a list of questions that he believes this Court did not hold in proper consideration***. He believes that his petition's list has made his point. One of the most important questions being whether, or not Art Hadley is testate, and why? The Court's opinion does not address this question in any aspect, and this petitioner can only conclude that this argument has been overlooked. This petitioner could further individually explain each question as to why it is pertinent to his objections if the Court desires further explanations, but for the most part his presented questions have been carefully researched and explained in his earlier briefs. Mr. Read notes (in his opinion) that this petitioner *"demonstrates an extraordinary amount of hubris and pique at the Court for its failure to have seen the wisdom of*

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[55] Duplicitous because his earlier positions are so radically different. Does he now have a new and correct understanding, or is he just an advocate for the outcome that gives to him the most money? Which of his changing arguments are correct, and how can this Honorable Court trust them.

his earlier arguments." This petitioner admits to a concern in his conscience, and to a sense of responsibility to act over this Honorable Court's choice, but most certainly not *"an extraordinary amount of hubris and pique"* for the Court's *"failure to have seen the wisdom of his earlier arguments."* He presented his questions for many reasons, and the fact is that these questions need to be asked, and answered to define testator intent, and the relation of that intent to the law. If the Court had considered these questions, those considerations should be addressed in its decision. This petitioner sees no evidence of that, and legitimately believes that his questions have been overlooked.

5) ***This petitioner presented good reasons in his petition as to why it is that he believes that this Court's two defining questions are inadequate.*** He believes that he has made his case, and even though there is more that could be said supporting it, he has sufficiently explained.

6) ***This petitioner believes for good reasons that Champagne vs. Fortin is not an equitable comparison for this present case.*** Primarily, because Art Hadley's case has clearly revealed testator intentions while the Champagne case had none. The lack of intentions was this Court's stated reason as to why it was that it resorted to solving the Champagne case with a resulting trust. Resulting trusts are exclusively reserved for trusts where there are no further testator intentions. This petitioner for many reasons believes that his arguments to this issue where overlooked.

7) ***This petitioner for good reasons believes that this Honorable Court has seriously failed to identify and give consideration to Art Hadley's intentions, in other words, this Court has completely failed to fairly construct these two trusts!*** As noted the lawyer's have a valid, but not an absolute objection to this petitioner's addressing Articles EIGHTH and NINTH, but a correct understanding of them is necessary to properly understand Art Hadley's intended

relationship of these two trusts to each other, and other issues. This petitioner does apologize for his mistake, but he also again reminds all that he is not presenting new arguments from a new source; he is only noting something that already exists in the accepted body of evidence that has been read by all including this Honorable Court. He also reminds this Court, that it is essentially he alone who has seriously endeavored to present a congruent argument of all of the facts of the trusts and the law, and would this Honorable Court please forgive this one oversight? An earlier omission that is recognized should never be denied in the reargument process if that denial may lead to an injustice, for if an injustice occurs this Court has failed. In that reargument is a legitimate part of the arguing process, if allowed, the disallowal of these two articles would prevent a true and complete picture. The Articles are a legitimate part of the presented trusts which all have studied to either understand, or to find a way around Art Hadley's clear intentions. ***A new look at the already existing and accepted evidence is the purpose of a reargument***.

8) ***The final result defies sense.*** This petitioner reminded this Court that the assets to be distributed are Art Hadley's. It is an odd thing that flies in the face of natural justice that Mr. Read's clients who are not even remotely related to Art Hadley in any way have, with a skilled and clever lawyer, found and exploited a loophole that really doesn't even exist, and they (the non-relatives) have inherited in place of legitimate blood heirs-at-law. This petitioner gave good reasons in his briefs as to why this is wrong and he sees in the Court's decision no evidence that his arguments to this issue were considered in any way.

Contrary to the attorney's assertions, this petitioner does believe that he has made his case for reargument with his first petition. He respectfully reminds this Honorable Rhode Island Supreme Court that it has a responsibility to ensure true justice, even if the road to that end is

challenging. This petitioner has seriously endeavored to be fair to the law and Art Hadley's intentions. He offers no apologies for his voluminous briefs, because the conceptual issues are abstract, foundational, and difficult, and unfortunately the issues require from this Court valuable time and hard work. This petitioner from his work in these trusts, and with the law well knows what it takes to properly understand these issues in proper context. It is because of his work and consequential understanding that he has reasons to believe from this Court's decision that it has not invested the necessary work to properly understand these issues, and consequently, this Honorable Court has misapprehended and overlooked the arguments of this petitioner.

This petitioner prays that this Honorable Court will reconsider and grant to him his request for a reargument, and that this Court will also grant to him permission to include Articles EIGHTH and NINTH in the same. It is his hope that in his forthright and direct presentations of his disagreements with this Honorable Rhode Island Supreme Court, and with Mr. Harpootian and Mr. Read that he is not considered as being rude or disrespectful to this Court, or to any other person in any fashion.

Respectfully Submitted By: Ronald Eliot Gay, *pro se*
31 West Church Street
Evansville, Wisconsin 53536
(608) 882-5576

/s/ Ronald E. Gay

Respectfully Submitted to: The Rhode Island Supreme Court, and all counsel and *pro se* of record on this 5th day of May, 2008, by regular mail.

Art Hadley's January 24th, 1933, TESTAMENTARY TRUST:

I, Art Hadley, of the City of Providence in the State of Rhode Island, declare this to be my last will and testament, hereby revoking all other wills, codicils and testamentary dispositions heretofore by me made.

FIRST: I direct that all my just debts, funeral expenses and the expenses of settling my estate shall be paid from my estate by my executor hereinafter names.

SECOND: I give and bequeath all my household furniture and furnishings, silver, china, glassware, books, pictures, automobiles and their accessories, horses, carriages and their accessories, wearing apparel, jewelry, and all other articles of household or personal use or ornament, belonging to me at the time of me decease, to my wife, Frances E. Hadley.

THIRD: I give and bequeath the sum of One Thousand Dollars ($1,000) to Charles R. Tost of the Town of North Providence in said State of Rhode Island.

FOURTH: I give, devise and bequeath all the rest, residue and remainder of my estate both real and personal, of every kind, name, nature and description and whosesoever situate, of which I shall die seized or possessed or to which I shall be in any way entitled or over which I may have testamentary control or any power of disposition or appointment at the time of my decease, which power I hereby expressly exercise, including all real estate by me Hereinafter acquired, to the Blackstone Canal National Bank of Providence, a national banking association locate in said City of Providence, upon trust, however, for the following uses and purpose, that is to day: for said trustee, its successor or successors, all hereinafter called and referred to as "said trustee", to take possessing, control and management of said rest, residue and remainder of my estate, the same with all investments and reinvestment thereof being hereinafter called and referred to as "said trust estate", and to have charge of and to

manage the same in their absolute and uncontrolled discretion as they may deem for the best interest of all concerned, and to collect all the income, rents and profits thereof find out of the same to pay all the expenses of managing said trust estate, including taxes and a reasonable compensation to said trustees for their services, and to pay over, use and apply the net income of said trust estate in the following manner, viz.:-

a) To pay out of said net income the sum of Fifty Dollars ($50) per month to my mother, Maria S. Hadley, during her life.

b) To pay over three-fourths of the balance of said net income to my said wife, Frances E. Hadley, during her life.

c) To pay over to my said wife and/or to pay over to or use and apply for the support, maintenance, education or other-wi[s]e for the benefit of, any child or children of mine from time to time living and the issue from time to time living of any child or children of mine who may have decease, one-fourth of said balance of said net income in such amounts and proportions and in such manner as said trustees from time to time may determine until the decease of my said wife.

At the time of the decease of my said wife, hereinafter called "the time of division", I direct said trustees to divide said trust estate into as many portions as nearly as may be of equal value as shall then be children of myself surviving and children of myself theretofore deceased leaving issue then surviving; and in case any of my said children shall then have reached the age of twenty-five (25) years or shall have died leaving issue then living, said trustees shall thereupon transfer, convey or pay over one of said portions of said trust estate to such child or to such issue in equal shares, as the case may be, absolutely

and in fee simple, for his, her or their own use; and said trustees from and after the time of division shall pay over the net income from one of said portions to each child of mine from time to time living and under the age of twenty-five (25) years until such child reach the age of twenty-five (25) years and thereupon shall transfer, convey and pay over to such child reaching the age of twenty-five (25) year said portion or said trust estate absolutely and in fee simple, for his or her own use, whereupon the trust as to such portion shall terminate.

In case of the decease of any of may children after the time of division under the age of twenty-five (25) years leaving issue surviving, said trustees shall thereupon transfer, convey and pay over the portion of said trust estate theretofore held in trust for such child to the issue of such child then surviving absolutely and in fee simple, for his, her or their own use, hereupon the trust as to such portion shall terminate.

In case of the decease of any of my children after the time of division under the age of twenty-five (25) years without leaving any issue surviving him or her, the portion of said trust estate thereto fore held in trust for such child shall be equally divided among the remaining portions of said trust estate and shall follow the disposition thereof herein made. .

I further will and direct that during the minority of any of my children who may at any time be entitled to any share of the net income of said trust estate, said trustees may apply such share of net income or so much thereof as said trustees may see fit to the support, maintenance and education or otherwise for the benefit of such child, or pay over such share of net income or any part thereof to any legally appointed guardian or such child or accumulate any part to said share of net income and add the same to the principal, or afterward pay over an apply the same as aforesaid.

FIFTH; I herby authorize and empower said trustees from time to time to sell all or any part of said trust estate for such prices and upon such terms as they deem advisable, and to lay out, continue and invest said trust estate as they in their discretion may deem wise, with power to change and vary investments, whether original or subsequent, form time to time in their discretion and to continue and maintain any portion of said trust estate in the same form and investment in which the same may be found at the time of my decease, even though hazardous or doubtful or not authorized by law as investments for trustees, and I hereby direct that they shall not be liable for any loss by reason of continuing and maintaining any such investments; and in case of any sale of sales to sell at public or private sale for cash or on credit, together or in parcels; and in case of any lease or leases to lease for such period or periods of time, though extending beyond the duration of this trust, including the power to make "building leases" so called, and to insert in such leases such provisions concerning the appraisement of net from time to time and concerning the sale or purchase of the buildings erected on the demised premises, and upon such other terms and conditions, as to said trustees may seem best; and in case of any partition, whether by sit or deed, and in case of any exchange, to give or receive any sum or sums of money by way of equality of partition or exchange. I further declare that purchasers and other persons who shall pay any money or deliver any property to said trustees shall be exempt from all responsibility with respect to the application of the same and from the necessity of inquiring into the regularity, validity or propriety of any sale made or purporting to be made under the trust or powers herein set forth.

I hereby authorize and empower the said trustees to appoint from time to time an attorney or attorneys to represent them at any meeting of any corporation, joint stock company, trust or association in which any part of said trust; estate may be invested. I also authorize and

empower said trustees to vote the share belonging to said trust estate in any corporation, joint stock company, association or trust, in the same manner that an individual owner might do, including, but without limiting the generally of said power, that power to vote for or consent to the liquidation or dissolution of any such corporation, joint stock company, association or trust, or the sale of all its assets, or there organization thereof, or the consolidation or merger thereof into or with any other corporation, joint stock company, association or trust, and generally to do and perform any other act or thing whatsoever with respect to the shares of said trust estate therein that an individual owner might do or perform.

I also hereby authorize and empower said trustees to convey the whole or any portion of said trust estate to a corporation formed or to be formed for the purpose of holding or managing the same, and to accept in payment therefore the stocks, bonds or other securities of such corporation.

I further will and direct that all "stock dividends", so called, paid in stock or shares of the corporation, company, trust or association paying or issuing the same and all proceeds of the sale of "rights" to subscribe to new stock or shares in any corporation, company, trust or association, shall be treated by said trustees wholly as capital or principal and not as income.

I hereby direct, order and request that the trustees hereinbefore named and any other trustees or trustee for the time being hereunder shall be exempt from giving any bond or bonds to any court either in the State of Rhode Island or elsewhere in the United States of America or in any foreign country, and in case any such bond or bonds be required, that they and each of them be exempt form furnishing any surety upon such bond or bonds.

SIXTH: I hereby nominate and appoint my said wife, Frances E. Hadley, as testamentary guardian of the persons and estates of my children, Thomas P. Hadley and Sarah Louise Hadley, and any other child or children of

main who may survive me, during their minority, respectively, and I direct, order and request that she be not required to give any bond or bonds as such guardian, or, if such bond or bonds be by law require, that she be exempt from giving any surety thereon t any court either in the Ste of Rhode Islands or elsewhere in the United States of America or in any foreign county.

SEVENTH: I will, order and declare that in case at the time of my decease there shall be outstanding any promissory notes made, drawn, indorsed, guaranteed, or otherwise secured by me, than in such case it shall be lawful for my executor or the administrators or administrator with this will annexed, to make, draw, sign, indorse or guarantee any note or notes given in renewal of or in substitution for said notes respectively, and whether for the whole or any part or parts of any such note or notes, or to make, sign and issue any new note or notes for the purpose of raising money to be applied in payment in whole or in part of any such notes that may be outstanding at the time of my decease, with power in said executor, administrators or administrator, to continue or renew any such notes, endorsements or guarantees whenever and as many times as said notes my be renewed or replace. And I further order, will and declare what all notes made, signed, drawn, issued, indorsed or guaranteed by said executor, administrators or administrator, as aforesaid, shall be a fixed charge and lien upon my estate prior and superior to any legacies or gifts herein mentioned.

I hereby authorize and empower said executor, administrators or administrator, to waive demand, notice or protest upon any notes made, drawn, indorsed or guaranteed by me as aforesaid and coming due after my decease, and also upon any notes made, drawn, indorsed or guaranteed by said executor, administrator or administrators, after my decease as aforesaid; and also pledged or hypothecate any tocks, bonds or other securities or personal property belonging to my estate as collateral security for the payment of all or any of said notes.

EIGHTH: I hereby declare that my omission to make any other or further provisions in this will for my children, Thomas P. Hadley and Sarah Louise Hadley, or for any child or children that I may have, or for the issue of any deceased child or children or mine, is intentional and not occasioned by accident or mistake.

NINTH: I hereby declare that the bequests, devises and other provisions hereinbefore made to or for the benefit of my said wife, Frances e. Hadley, are in lieu of dower and of all other interest she may have in and to my estate.

TENTH: I will and direct that all legacy and succession taxes, death duties and other like taxes which may be payable upon any legacy, bequest or dives given or made by this will, and all taxes and assessments, including inheritance, estate and succession taxes, and death duties upon the transfer of any securities or property belonging to my estate at my decease or upon the right to transfer or the right to receive any such securities or property, shall be paid out of the principal of my residuary estate generally and shall not be charged against nor deducted from any such legacy, bequest or devise.

ELEVENTH: I direct that my said executor and said trustee shall as its discretionary judgment shall determine for the time being retain, sell or otherwise dispose of all or any part of such stock or other securities of the Hadley Company, Incorporated and/or The Hadley Company, Limited or any successor corporation or corporations which I may own at the time of my death, and in case of such sale or other disposition of any of said stock my said executor and/or said trustee may sell or otherwise dispose of the same to either of said corporations or their successor or successors upon such terms as my said executor and/or said trustee shall in its sole discretion determine and irrespective of the fact that my estate may own a substantial or controlling interest in either or both of said corporations or tier successor or successors. In case all or any part of such stock shall be so retained; I authorize and empower my said executor and said trustee to vote the

same for such management and policies as it shall in its sold discretion from time to time determine.

TWELFTH: I hereby nominate and appoint said The Blackstone Canal National Bank of Providence as executor of this will. Direct that said executor shall be exempt from giving any bond or bonds, or, if any bond or bonds be required, it shall be exempt from furnishing any survey upon said bond or bonds either to the Court in which this will shall be originally probated or to any other court either in the United States of America or in any foreign county in which this will or any copy thereof shall be probated or recorded, and I further direct that said executor shall be exempt from filing any inventory of my estate or any account in any court. I hereby authorize and empower said executor to sell either as public or private sale any of my persona estate for the purpose of carrying out the provisions of this will or of settling my estate for such prices as it may deem best, and to execute and deliver all such deeds and other instruments as may be necessary or proper for such purposes; and I hereby declare that no purchaser shall be bound to inquire into the necessity of r any such sale or to see to the application of the purchase moneys or b responsible for the loss or misapplication thereof.

IN WITNESS WHEREOFF, I have hereunto set my hand and seal at the end of this my will, consisting of eight (8) pages, and have signed my name on the margin of each of the preceding seven pages (7) hereof, this 24th day of January in the year of our Lord One thousand nine hundred and thirty-three.

/s/ Art Hadley

Signed, sealed, published and declared by the above named Art Hadley as and for his last will and testament, in the presence of each other, have here unto subscribed our names as witnesses.

/s/ Frank L. Hinckley Providence, Rhode Island

/s/ W. Harold Hoffman Providence, Rhode Island

/s/ Susan Harker Providence, Rhode Island

Art Hadley's 1st TESTAMENTARY TRUST Codicil of March 24th, 1934:

I, Art Hadley, of the City of Providence in the State of Rhode Island, declare this to be a codicil to my last will and testament which was dated and executed on the 24th day of January 1933.

FIRST: I hereby appoint George A. Ingleby, of the City of Cranston in the State of Rhode Island, as a co-trustee of the trust created by the FOURTH clause of my said will to act jointly with The Blackstone Canal National Bank of Providence therein appointed as trustee, so that said The Blackstone Canal National Bank of Providence and George A. Ingleby shall be trustees under the trusts created by said FOURTH clause of my said will, with all the same right, title, interest, powers, authorities, discretions and exemptions, and subject to all the same liabilities, obligation and limitations, as if said The Blackstone Canal National Bank of Providence and George A. Ingleby had been originally appointed trustees under said trusts in my said will.

SECOND: I hereby appoint said George A. Ingleby as a co-executor of my said will to act jointly with said The Blackstone Canal National Bank of Providence which was appointed executor in the TWELFTH clause of my said will, so that said The Blackstone Canal National Bank of Providence and George A. Ingleby shall be executors of my

said will, with all the same right, title, interest, powers, authorities, discretions and exemptions, and subject to all the same liabilities, obligation and limitations, as if said The Blackstone Canal National Bank of Providence and George A. Ingleby had been originally appointed trustees under said executors in my said will.

THIRD: I hereby ... (unreadable) ...

IN WITNESS WHEREOF, I have hereunto set my hand and seal at the ... (unreadable) ... 24th day of March in the year of our Lord One Thousand Nine Hundred and Thirty-four ... (unreadable).

/s/ Art Hadley (seal)

Signed. Sealed, published and ... (unreadable) ... above named Art Hadley ... (unreadable) ... for a codicil to his last will and testament in the presence of us, ... (unreadable) ... his presence and in the presence of each other, have ... (unreadable) ... subscribed our names as witnesses.

/s/ Frank L. Hinckly	Providence, Rhode Island
/s/ (unreadable)	Providence, Rhode Island
/s/ Susan (unreadable)	Crandon, Rhode Island

Art Hadley's 2nd TESTAMENTARY TRUST Codicil of December 9th, 1940:

I, Art Hadley, of the City of Providence in the State of Rhode Island, declare this to be a Second Codicil to my last will and testament which was dated and executed on the 24th day of January 1933.

FIRST: I hereby change, amend and modify my said will in the following respects and in the following manner, viz.:-

I hereby will, direct and provide that the trust created and contained in my said will of the rest, residue and remainder of my estate, as described in said will, shall be continued and extended and that the trust estate mentioned and described in the FOURTH clause of my said will shall be held in trust by the trustees named in my said will and in the First Codicil hereto, which was dated and executed on the 24th day of March , 1934, or by their successors or successor or the trustees or trustee for the time being under said trust until the decease of the last survivor of my children Thomas P. Hadley and Sarah Louise Hadley or until the decease of my wife Frances E. Hadley whichever event shall last happen; and that from and after the decease of my said wife said trustees or trustee shall from time to time pay over to my said children or to the children and issue from time to time living of either of my said children who may have deceased, or shall use and apply for the support, maintenance and education or otherwise for the benefit of my said children or of such children or issue of any deceased child of mine, the net income of said trust estate or so much , and in such amounts, shares and proportions and in such manner as said trustees or trustee may from time to time in their absolute and uncontrolled discretion decide and determine, or may from time to time accumulate any part of said net income and add the same to the principal of said trust estate or afterwards pay over and/or use and apply the same or any part of the same as aforesaid; and upon the decease of the last survivor of my said two children or upon the decease of my said wife, whichever event shall last happen. I hereby will, direct and provide that said trustees or trustee shall assign, transfer, convey and pay over the principal of said trust estate to the children and issue then living or my said two children in equal shares per stirpes

absolutely and in fee simple, and thereupon said trust shall cease and terminate.

SECOND: I hereby ratify and confirm my said will and said First Codicil in all other respects.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at the end of this Second Codicil to my last will and testament this 9th day of December in the year of our Lord one thousand nine hundred and forty (1940).

/s/ Art Hadley

Signed, sealed, published and declared by the above named Art Hadley as and for a Second Codicil to his last will and testament in the presence of us, who, at his request, in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses.

/s/ Frank L. Hinckley	Providence. R. I.
/s/ Hayward T. Parsons	Providence. R. I.
/s/ William E. Sleight	Cranston R. I.

Art Hadley's January 15th, 1936 LIVING TRUST:

INDENTURE made this 15th day of January, 1936, by and between Art Hadley residing in and domiciled in the City and County of Providence in the State of Rhode Island, United States of America, hereinafter called the "Settlor," party of the first part, and THE BLACKSTONE CANAL NATIONAL BANK OF PROVIDENCE, a national banking association located in said City of Providence, hereinafter, together with any successor trustee or trustees or any trustee or trustees for the time being, called the "Trustee," party of the second part,

WITNESSETH:

THAT WHEREAS the settler desires to create a trust fund for the benefit of himself, his wife, his children and other remote issue, and upon the failure of such trusts, upon certain other trusts as hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants by each with the other made and hereinafter contained and of other good and valuable consideration, the parties hereto covenant with each other as follows:

FIRST: The Settlor, in consideration of the acceptance by the Trustee of the trust herein set out, has transferred, assigned and delivered, and does hereby transfer, assign and deliver to the Trustee twenty-six hundred fifty (2650) fully paid ordinary shares of 61 each, numbers 1,2 and 2353 to 5000 inclusive of The Hadley Company Limited, a company incorporated under the laws of Great Britain and having its registered office at Portsmouth Road, Surbiton, in the County of Surrey, in England, said shares being represented by Share Certificate No. 6, dated November 17, 1930, issued by said Company, and also all the right, title and interest of the Settlor in and to One Thousand (1,000) shares additional

and any and all other shares of said The Hadley Company Limited, said shares and certificate, or any other certificate or certification representing said shares or which may be hereafter issued in lieu of said certificate, and all the proceeds of the sale of all or any part thereof and the investments and reinvestments of such proceeds, being hereinafter called the "trust estate"'

TO HAVE AND TO HOLD the same, absolutely and in fee simple, but IN TRUST NEVERTHELESS, to take the care, charge and management of and to collect the interest, dividends and income accruing and arising from the trust estate and the various shares, if any, thereof, and after paying from said interest, dividends and income all charges, assessments and taxes upon the trust estate and said shares (except those chargeable against principal by law or as hereinafter provided) and all other expenses attending the execution of the trusts, including a reasonable compensation for services in the trusteeship (but this shall not preclude charges against principal when the same shall be proper(, all such charges, assessments, taxes and expenses to be apportioned, if necessary, to the various shares of the trust estate as the Trustee in tits sole discretion deems equitable, to pay and apply the balance of such interest, dividends and income (said balance being hereinafter referred to as the "net income") and to divide: use, distribute and pay over the principal of the trust estate and the various shares thereof in manner following:

1. The Trustee shall pay over all the net income of the trust estate to the Settlor during his life.

2. Upon the decease of the Settlor, if his wife, Frances E. Hadley, shall survive him, the Trustee shall

a. Pay over to the Settlor's and wife, three-fourths (3/4) of said net income during her life;

b. Pay over to the Settlor's said wife and or pay over to or use and apply for the support, maintenance, education or otherwise for the benefit of any child or children of the Settlor from time to time living and the issue from time to time living and any child or children of the Settlor who may have decease, one-fourth (1/4) of said net income in such amounts and proportions and in such manner as said Trustee from time to time may determine until the decease of the Settlor's said wife.

3. Upon the decease of the Settlor's said wife, if she shall survive him, otherwise upon his decease, whichever eventuality occurring being hereinafter called the "time of division," the Trustee shall divide the trust estate into as many shares as nearly as may b3e of equal value as there shall be children of the Settlor then living and children of the Settlor theretofore deceased leaving issue then surviving; and in case any of the Settlor's children shall then have reached the age of twenty-five (25) years or shall have died leaving issue then living, the Trustee shall thereupon transfer, convey and pay over one of said shares of said trust estate to such child or to such issue in equal shares, as the case may be, absolutely and I fee simple, for his, or her or their use, and the Trustee, from and after the time of division, shall ay over the net income form one of said shares to each child of the Settlor from time to time living and under the age of twenty-five (25) years until such child shall reach the age of twenty-five (25) years, and thereupon shall transfer, convey and pay over to such child reaching the age of twenty-five (25) years said share of said trust estate, absolutely and in fee simple, for his or her own use, whereupon the trust as to such share shall terminate.

4. In case of the decease of any of the Settlor's children after the time of division, under the age of twenty-five (25) years, leaving issue surviving, the Trustee shall

thereupon transfer convey and pay over the share of said trust estate theretofore held in trust for such child to the issue of such child then surviving, in equal shares, absolutely an in fee simple, for his, her or their use, whereupon the trust as to such share shall terminate.

5. In case of the decease of any of the Settlor's children after the time of division, under the age of twenty-five (25) years without leaving any issue surviving him or her, the share of said trust estate theretofore held in trust for such child shall be equally divided among and follow the disposition of the other shares of the trust estate, whether distributed or undistributed.

6. In case of the total failure of all of the trusts hereinbefore provided for with respect to the final disposition of the principal of the trust estate or any shares thereof, the Trustee shall transfer, covey and pay over the then principal of the trust estate, or such shares, as the case may be, discharged of these trusts, to and among those persons who would then be entitled to the personal estate of the Settlor under the laws of said State of Rhode Island had he then died intestate, a domicile inhabitant of said State, according to the statutes of distribution then in force in said State, and in the shares and proportions provided by said statutes.

7. Anything to the contrary hereinbefore notwithstanding, if upon the expiration of twenty-one (21) years after the death of the last survivor of the Settlor, his said wife and their children, Thomas P. Hadley and Sarah Louise Hadley, any share or shares of the trust estate shall remain undistributed, the Trustee shall forthwith transfer, convey and pay over, absolutely, the then principal of such share or shares, as the case may be, to the person or persons then respectively entitled to the income thereof.

SECOND: The Trustee is authorized and empowered from time to time and at any time to sell all or any part of said trust estate for such prices and upon such terms as it deems advisable, and to lay out, continue and invest said trust estate as it in its discretion my deem wise, with power to change and vary investments, whether original or subsequent, from time to time in its discretion and to continue and maintain any portion of said trust estate in the same form and investment in which the same may be found at the date hereof, even though hazardous or doubtful or not authorized by law as investments for trustees, and it shall not be liable for any loss by reason of continuing and maintaining any such investments: and in case of any sale or sales to sell at public or private sale for cash or credit, together or in parcels; and in case of any lease or leases to lease for such period or periods of time, though extending beyond the duration of this trust, including the power to make "building leases" so-called, and to insert in such leases such provisions concerning the appraisement of rent from time to time and concerning the sale of purchase of the buildings erected on the demised premises, and upon such other terms and conditions, as to the Trustee may seem best; and in case of any partition, whether by suit or deed, and in case of any exchange, to give or receive any sum or sums of money by way of equality of partition or exchange.

The Trustee is further authorized and empowered from time to time and at any time to appoint an attorney or attorneys to represent it at any meeting of any corporation, joint stock company, trust or association in which any part of said trust estate may be invested; to vote the shares belonging to said trust estate in any corporation, joint stock company, association or trust, in the same manner that an individual owner might do, including, but without limiting the generality of said power, the power to vote for or consent to the liquidation or dissolution of any such corporation, joint stock company, association or trust, or

the sale of all its assets, or the reorganization thereof, or the consolidation or merger thereof into or with any other corporation, joint stock company, association or trust, and generally to do and perform any other act or thing whatsoever with respect to the shares of said trust estate therein that an individual owner might do or perform; and to convey the whole or any portion of said trust estate to a corporation formed or to be formed for the purpose of holding or managing the same, and to accept in payment therefore the stocks, bonds or other securities of such corporation.

The Settlor declares and directs in the administration of the trusts of this instrument that

1) any purchaser of other person who shall pay any money or deliver any property to the Trustee shall be exempt from all responsibility with respect to the application of the same and from the necessity of inquiring into the regularity, validity or propriety of any sale made or purporting to be made under the trusts or powers herein set forth;
2) no corporation, company, association or business trust which shall at the request of the Trustee transfer on its books any of its capital stock or shares standing in the name of or held by or belonging to the Trustee or said trust estate, and no person, corporation, company, association or business trust having any dealings with the Trustee shall be required to inquire into the regularity, validity or propriety of such transfer or of any action taken or purporting to be taken by the Trustee under the foregoing trust;
3) during the minority or disability of any person who may at any time be entitled to any share of the net income of said trust estate, the Trustee may apply such share of said net income or so much thereof as the Trustee may see fit to the support, maintenance and education or otherwise for the benefit of such child, or pay over such share of net income or any part thereof to any legally appointed guardian of such child or accumulate any part

of said share of the net income and add the same to the principal or afterward pay over and apply the same as aforesaid;

4) all "stock dividends,' so-called, paid- stock or shares of the corporation, company, trust or association paying or issuing the same and all proceeds of the sale of "rights" to subscribe to new stock or shares in any corporation, company, trust or association, shall be treated by the Trustee wholly as capital or principal and not as income;
5) the Trustee hereinbefore named and any other trustees or trustee for the time being hereunder shall be exempt from giving any bond or bonds to any court, either in the State of Rhode Island or elsewhere in the United States of America or in any foreign country, and in case any such bond or bonds be required, they and each of them shall be exempt from furnishing any surety upon such bond or bonds;
6) the powers and authorities in this Indenture given to and conferred upon said The Blackstone Canal National Bank of Providence may be exercised by any committee, officer or officers of said Bank properly authorized to act for it in such matters;
7) all income required to be paid by the Trustee shall be paid quarterly or oftener in as nearly as may be equal installments;
8) the trustee may cause the securities and property which may from time to time comprise the trust estate or any share thereof to be registered in its own name individually without any further designation or as Trustee hereunder or in the name of its nominee or nominees, whether such nominee or nominees be an individual or individuals or a partnership, or may take and keep them unregistered and retain them or any part thereof in bearer form or in such a condition that they will pass by delivery.

THIRD: Notwithstanding anything to the contrary herein contained, the Settlor may, from time to time, during his lifetime, by instrument in writing executed and

acknowledged and delivered to the Trustee, modify or alter in any manner, or revoke in whole or in part, this Indenture and the trusts then existing, and the estates and interests in properly hereby created, and in case of such revocation said instrument shall direct the disposition to be made of the trust fund, or of the portion thereof affected by such revocation, and the Trustee shall make, execute and deliver such instruments, if any, and make such conveyances and transfers of property as may be necessary or proper in order to carry the same into effect, and no one shall have any right, interest or estate under this Indenture except subject to the proper modification, alteration or revocation thereof; provided, however, that during the lifetime of George A. Ingleby of the City of Cranston in said County and State, the powers reserved by the Settlor in this Article THIRD of this Indenture shall be exercised by him only upon the written consent of said George A. Ingleby, executed and acknowledged and delivered to the Trustee, but after the death of said George A. Ingleby shall be exercised by him alone; and provided further, however, that no amendment shall affect the compensation of the Trustee nor increase the obligations of the Trustee or change its rights or duties without its consent in writing. The consent of said George A. Ingleby shall not be required, however, in the event that he should become legally incompetent.

FOURTH: The Trustee shall pay all estate, inheritance, transfer and succession taxes, if any, which may become payable by the trust estate or any share thereof. Such payments shall be made from the principal of the trust estate or if any such taxes shall become payable after the time of division into shares as hereinbefore provided, such payments shall be made from the principal of the respective shares with respect to which such tax or taxes shall have been assessed.

FIFTH: The provisions of Indenture and the trusts thereby created shall be construed by and governed in accordance with the laws of said State of Rhode Island.

IN WITENESS WHEREOF, in said city of Providence, the parties have hereunto set their hands and seals in duplicate, the Blackstone Canal National Bank of Providence by Albert R. Plant, its President, thereunto duly authorized, the day and year first above written, one original hereof having been delivered to the Settlor, Art Hadley, and one to the Trustee.

In presence of:

/s/ Sadie B. Stevens
as to aH & A.R.P.

/s/ Art Hadley

/s/ Clarence W. Harris
as to A.H., & A.R.P.

THE BLACKESTONE CANAL NATIONAL BANK OF PROVIDENCE

By /s/ Albert R. Plant
President

STATE OF RHODE ISLAND
COUTY OF PROVIDENCE

In Providence in said County and State on this 15th day of January, A. D. 1936, personally appeared before me the above named Art Hadley, to me known and known by me to be one of the parties executing the foregoing instrument, and he acknowledged said instrument by him executed to be his free act and deed.

/s/ Frank L. Hinckley
Notary Public

(seal)

STATE OF RHODE ISLAND
COUTY OF PROVIDENCE

In Providence in said County and State on this 15th day of January, A. D. 1936, personally appeared before me Albert R. Plant, President of the Blackstone Canal National Bank of Providence, to me know and know by me to be the person in and executing the foregoing instrument, in behalf of said The Blackstone Canal National Canal of Providence and acknowledged said instrument to be his free act and deed in his said capacity and the free act and deed of said The Blackstone Canal National Bank of Providence.

/s/ Frank L. Hinckley
Notary Public

(seal)

Art Hadley's 1st LIVING TRUST Codicil of December 14th , 1936:

KNOW ALL MEN BY THESE PRESENTS

THAT WHEREAS the undersigned, Art Hadley, is the Settlor under a certain Indenture dated January 15, 1936 between the undersigned as party of the first part and the Blackstone Canal National Bank of Providence as party of the second part; and

WHEREAS the undersigned, Art Hadley, under Article THIRD of said Indenture, reserved, among other rights, the right to modify or alter said Indenture in any manner during his lifetime, with the written consent of George A. Ingleby, during the life time of said George A. Ingleby; and

WHEREAS the undersigned, Art Hadley, is desirous of modifying and altering said Indenture so as to make the

said George A. Ingleby co-trustee thereunder with said the Blackstone Canal National Bank of Providence, and said George A. Ingleby and said The Blackstone Canal National Bank of Providence are willing to consent thereto;

NOW, THEREFORE, the undersigned, Art Hadley, pursuant to the right so reserved, hereby modifies and alters said Indenture by designating said George A. Ingleby as co-trustee thereunder with said The Blackstone Canal National Bank of Providence and hereby directs and declares that wherever the word "Trustee" appears in said Indenture the same shall be deemed to refer to said George Al. Ingleby and said Blackstone Canal National Bank of Providence, together with any successor trustee or trustees or any trustee or trustees for the time being.

The undersigned, Art Hadley, in all respects except as herein expressly provided hereby ratifies, approves and confirms said Indenture dated January 15, 1936.

As required by the provisions of said Article THIRD, said George A. Ingleby and Blackstone Canal National Bank of Providence hereby consent to the modification and alteration of said Indenture hereby made.

Said George A. Ingleby hereby executes this instrument in token of his acceptance of said Indenture as hereby modified and altered and of the trust created thereby.

IN WITNESS WHEROF said Art Hadley, said George A. Ingleby and said Blackstone Canal National Bank of Providence have hereunto set their hands and seals in triplicate, said Blackstone Canal National Bank of Providence by Albert R. Plant, its President, thereunto duly authorized, this 14th day of December, 1936.

/s/ Art Hadley

/s/ George A. Ingleby

THE BLACKESTONE CANAL
NATIONAL BANK OF PROVIDENCE

By /S/ Albert R. Plant
President

STATE OF RHODE ISLAND
COUTY OF PROVIDENCE

In Providence in said County and State on this 14th day of December, 1936, personally appeared before me the above named Art Hadley and George A. Ingleby, each to me know and know by me to be two of the parties executing the foregoing instrument, and they severally acknowledged said instrument by them executed to be their free act and deed.

/s/ Frank L. Hinckley
Notary Public

STATE OF RHODE ISLAND
COUTY OF PROVIDENCE

In Providence in said County and State on this 15th day of December, 1936, personally appeared before me Albert R. Plant, President of the Blackstone Canal National Bank of Providence, to me know and know by me to be the person in and executing the foregoing instrument in behalf of said The Blackstone Canal National Canal of Providence and acknowledged said instrument to be his free act and deed in his said capacity and the free act and deed of said The Blackstone Canal National Bank of Providence.

/s/ George W. Evans
Notary Public

Art Hadley's 2nd LIVING TRUST Codicil of June 9th , 1938:

KNOW ALL MEN BY THESE PRESENTS, that whereas the undersigned, Art Hadley, is the Settlor under a certain indenture dated January 15, 1936 between the undersigned as party of the first part and the Blackstone Canal National Bank of Providence as party of the second part; which indenture was amended by said Art Hadley on December 14, 1936 by the appointment of George A. Ingleby as co-trustee;

NOW, THEREFORE, the undersigned, Art Hadley, pursuant to the right so reserved, hereby modifies and alters said indenture, hereby modifies and alters said indenture by amending sub-paragraph 8 of Article SECOND thereof to read as follows:

> "(8) the Trustee may cause the securities and property which may from time to time comprise the trust estate or any share thereof to be registered in its own name individually without any further designation or as Trustee hereunder or in the name of its nominee or nominees, whether such nominee or nominees be an individual or individuals or a partnership, or may take and keep them unregistered and retain them or any part thereof in bearer form or in such a condition that they will pass by delivery. Without limiting the generality of the foregoing, the Trustee is hereby expressly authorized to permit any share s of the Hadley company Limited described in Article FIRST hereof to remain or to be registered in the sole name of the Settlor without any designation or indication of any trust concerning the same, and the Settlor hereby exempts and release

the Trustee from any liability whatsoever for so doing."

Said George A. Ingleby and said The Blackstone Canal National Bank of Providence hereby consent to the modification and alteration of said indenture as amended hereby made.

IN WITNESS WHEREOF said Art Hadley, said George A. Ingleby and said The Blackstone Canal National bank of Providence have hereunto set their hands and seals, said the Blackstone Canal National Bank of Providence by Albert R. Plant, its President, thereunto duly authorized, this ninth day of June, 1938.

UNITED KINGDOM OF GREAT)
)
BRITAN, CITY & COUNTY)
)
OF LONDON, ENGLAND.)

/s/ Art Hadley (SEAL)

/s/ George A. Ingleby (SEAL)

THE BLACKESTONE CANAL NATIONAL BANK OF PROVIDENCE

By /s/ Albert R. Plant
President

On this ninth day of June, 1938, personally appeared before me the above named Art Hadley, to me know and know by me to be one of the parties executing the foregoing instrument, and he acknowledged said instrument by him executed to be his free act and deed.

/s/ H. Peter Venn
Not: Pub: London.

GREAT BRITIAN AND NORTHERN IRELAND,)
LONDON, ENGLAND) SS.
CONSULATE GENERAL OF THE UNITED STATES)
OF AMERICA)

I, James E. Callahan Vice Consul
Of the United States of America residing at London, England, do hereby make known and certify to all whom it may concern that

HARRY PETER VENN.

Who hath signed the annexed certificate, is a (notary public) duly admitted and sworn and practicing in the city of London, England and that to all acts by him so done full faith and credit are and ought to be given in Judicature and thereout,

IN TESTIMONY WHEREOFF, I have hereunto set my hand and affixed my seal of Office at London aforesaid, this tenth day of June in the year of our Lord One Thousand Nine Hundred and thirty-eight.

/s/ J. E. Callahan

Vice Consul of the United States of America at London, England.

(SEAL)

Service No. 6209
Fee $2 = 8s 4d.

Art Hadley's 3rd LIVING TRUST Codicil of December 9th , 1940:

INDENTURE made this 9th day of December, 1940 by and between Art Hadley residing in and domiciled in the City Providence, in the County of Providence, in the State of Rhode Island, United States of America, hereinafter

called "the Settlor," party of the first part, and THE BLACKSTONE CANAL NATIONAL BANK OF PROVIDENCE, a national banking association located in said City of Providence, and GEORGE A. INGELBY, of the City of Cranston, in said State of Rhode island, hereinafter called "the Trustees", parties of the second part,

WITNESSETH:

THAT WHEREAS, the Settlor under date of January 15, 1936 executed an Indenture or deed of trust assigning to said The Blackstone Canal National Bank Of Providence. As Trustee, certain shares of the Hadley Company Limited Located in England; and

WHERREAS, by instrument dated December 14, 1938 the Settlor did appoint said George A. Ingleby as co-trustee under the aforesaid Indenture or deed or otrust; and

WHEREAS, by instrument; dated June 9, 1936 the Settlor did notify and alter sub-paragraph 8 of Article SECOND of the aforesaid Indenture or deed of trust:

NOW, THEREFORE, the undersigned Art Hadley pursuant to and in exercise of the right and power reserved by the Settlor in Article THIRD of the aforesaid Indenture of deed of trust and of all other powers thereunto him enabling hereby modifies and alters said Indenture or deed of trust dated January 15, 1936 in the following respects and in the following manner, viz.:-

Said Art Hadley does hereby direct and provide that the trust created and contained in the aforesaid Indenture or deed of trust shall be continued and extended and that the trust estate mentioned and described in the aforesaid Indenture or deed of trust shall be held in trust by the aforesaid trustees or by their successors or successor or the trustees or trustee for the time being under said Indenture or deed of trust until who decease of the last survivor of his children Thomas P. Hadley and Sarah Louise Hadley or until the decease of his wife Frances E. Hadley whichever

event shall last happen; and that from and after the decease of his said wife trustees or trustee shall from time to time pay over to his said children or to the children and issue from time to time living of either of his said children who may have deceased, or shall use and apply for the support, maintenance and education or otherwise for the benefit of his said children or of such children or issue of any deceased child of his, the net income of said trust estate or so much thereof and in such amounts, shares and proportions and in such manner as said trustees or trustee may from time to time in there absolute and uncontrolled discretion decide and determine, or may from time to time accumulate any part of said net income and add the same to the principal of said trust estate or afterwards pay over and/or use and apply the same or any part of the same as aforesaid; and upon the decease of the last survivor of his said two children or upon the decease of his said wife, whichever event shall last happen, said trustees or trustee shall assign, transfer, convey and pay over the principal of said trust estate to the children and issue then living of his said two children in equal shares per stirpes absolutely and in fee simple, and thereupon said trust shall cease and terminate.

Said Art Hadley in all respects except as herein expressly provided hereby ratifies, approves and confirms the aforesaid Indenture or deed of trust dated January 15, 1936 and the aforesaid other instruments dated respectively December 14, 1936 and June 9, 1938.

Said The Blackstone Canal National Bank Of Providence and George A. Ingleby and each of them do hereby expressly consent to the modification and alteration of the aforesaid Indenture or deed of trust dated January 15, 1936 herein made and contained.

IN WITNESS THEREOF, said Art Hadley, the Blackstone Canal National Bank of Providence and George A. Ingleby have hereunto set their hand and seals, in triplicate, said The Blackstone Canal National Bank Of

Providence by Charles B. McGowan its Vice-President, thereunto duly authorized, this 9th day of December, 1940.

Signed and sealed
In presence of:

/s/ Frank L. Hinckley as to A.H — /s/ Art Hadley (SEAL)

/s/ Frank L. Hinckley as to G.A.I — /s/ George A. Ingleby (SEAL)

THE BLACKESTONE CANAL NATIONAL BANK OF PROVIDENCE

/s/ Frank L. Hinckley as to C.B.* — /s/ Charles B. McGowan (SEAL)
Vice President

STATE OF RHODE ISLAND
COUTY OF PROVIDENCE

In Providence in said County and State on this 9th day of December, 1940, personally appeared before me the above named Art Hadley, to me know, and know by me to be one of the parties executing the foregoing instrument, and he acknowledged said instrument by him executed to be his free act and deed.

/s/ Frank L. Hinckley
Notary Public

STATE OF RHODE ISLAND
COUTY OF PROVIDENCE

In the City of Providence in said County and State on this 9th day of December, 1940, personally appeared before me the above named George A. Ingleby, to me know, and know by me to be one of the parties executing the foregoing instrument, and he acknowledged said instrument by him executed to be his free act and deed.

/s/ Frank L. Hinckley
Notary Public

STATE OF RHODE ISLAND
COUTY OF PROVIDENCE

In the City of Providence in said County and State on this 30th day of December, 1940, personally appeared before me Charles B. McGowan, the Vice-President of the Blackstone Canal National Bank of Providence, to me know and know by me to be the person in and executing the foregoing instrument in behalf of said The Blackstone Canal National Canal of Providence and acknowledged said instrument to be his free act and deed in his said capacity and the free act and deed of said The Blackstone Canal National Bank of Providence.

/s/ George W. Evans
Notary Public